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Supreme Court, U.S.
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Supreme Court of the United States

October Term, 2004
No.

WILLIAM S. TURCHYN and
MARIA TURCHYN

Petitioners,

vs.

REV. JOHN R. NAKONACHNY, et al.

Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the Supreme Court of Ohio

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January, 2005

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SUPREME COURT, U.S.

QUESTIONS PRESENTED

1. Did the Ohio Courts commit acts of invidious discrimination offensive to the US Constitution and in conflict with relevant decisions of the US Supreme Court by dismissing Petitioners Amended Complaint with an indiscriminate imposition of inequalities and judicial compulsion that abridged the privileges and immunities of citizens of the United States?

2. As a case of first impression, is fraud and collusion an exception of Constitutional dimension to Watson v. Jones, 13 Wall. 679 (1872) in a church of either congregational or hierarchical polity?

3. As a case of first impression, is the abandonment of one church for another under Bouldin v. Alexander, 15 Wall. 131 (1872), an amendment to or an exception of Constitutional dimension to Watson v. Jones, 13 Wall. 679 (1872) in a church of either congregational or hierarchical polity?

4. Did the Ohio Courts commit acts of invidious religious discrimination and preferential treatment offensive to the US Constitution and in conflict with relevant decisions of the US Supreme Court when they declined to adjudicate both an identification of church polity, either congregational or hierarchical, and determine property ownership under Neutral Principles of Law?

5. Did the Ohio Courts commit acts of invidious religious discrimination and preferential treatment offensive to the US Constitution when they ignored jurisdiction to adjudicate an alleged merger of churches which occurred without compliance of Ohio statutes?

6. Did the Ohio Courts, in declining jurisdiction to adjudicate the alleged church merger, create or establish a new church in offense of the US Constitution and relevant decisions of the US Supreme Court?

7. Does unresolved conflict in Ohio Appellate Courts when defining the "enterprise" element of Ohio's Pattern of Corrupt Activities Law deprive and deny Petitioners protections and guarantees of the 1st, 5th, and 14th Amendments?

8. Because conflict exists in interpreting Ohio Pattern of Corrupt Activities Law in the State and Federal Courts, does the effect of Federal RICO legislation by Congress oust Ohio PCA as enacted by the Ohio General Assembly under the Supremacy Clause, Article VI, of the US Constitution?

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October Term, 2004
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Petitioners,

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REV. JOHN R. NAKONACHNY, et al.

Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the Supreme Court of Ohio

Petitioners, William S. Turchyn and Maria Turchyn hereby petition for a writ: of certiorari to review the judgment of the Supreme Court of the State of Ohio.

OPINIONS BELOW

The decision of the Ohio Supreme Court to decline jurisdiction to hear the case (App. A1) is reported at 816 N.E.2d 1080. The opinion of the Ohio Court of Appeals 8th District (App. A2 – A10) is reported at 811 N.E. 2d 119. The opinion of the Cuyahoga County Court of Common Pleas (App. A11 – A12) is not reported.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. section 1257 (3).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Article VI, Supremacy Clause:

> ...This Constitution and the Laws of the United States...shall be the Supreme Law of the Land ...

United States Constitution, Amendment I:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof ...

United States Constitution, Amendment V:

> ...nor be deprived of life, liberty, or property without due process of law...

United States Constitution, Amendment XIV, Section 1:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

St. Vladimir's Ukrainian Orthodox Church was organized in 1924 in the State of Ohio, City of Cleveland, as a church of congregational polity governed by the parishioners in accordance with the Articles of Incorporation and the Constitution and By-Laws.

Petitioner, William Turchyn, was a member of the Executive Board of Trustees in 1999 when the controversies erupted and Petitioner, Maria Turchyn, is and has been a member of St. Vladimir's since 1962.

Petitioner, William Turchyn, was mandated by the President of the Board of Trustees to investigate a Diocesan lawsuit initiated in New Jersey against a parish of similar polity that threatened the congregational polity and property ownership of St. Vladimir's in Ohio.

Petitioner, William Turchyn, presented his initial findings to the Board of Trustees on September 12, 1999 which raised substantial questions of fraud and corrupt activity. These revelations included the clandestine and voluntary abandonment of St. Vladimir's and the Diocese by clergy and laity for the surreptitious union with the Church of Constantinople, a church of hierarchical polity. Another significant issue was the alleged "merger" of St. Vladimir's and the Diocese with the Church of Constantinople which, in effect, eliminated and replaced independence and congregational polity without either pre-requisite Ohio statute and the approval of parish membership.

As a result of his report, on November 26, 1999, Petitioner, William Turchyn was "suspended" by Respondents, Nakonachny and Constantine, in a fraudulent, deceitful, and coercive act in order to suppress Petitioners findings and stop any further investigation.

Petitioner, William Turchyn, brought the issue of wrongful suspension to the proper authority at St. Vladimir's, who collectively remained silent in violation of their fiduciary duties to protect the property and assets of St. Vladimir's from wrongful diversion and to arbitrate matters of parish discipline and membership.

The loss of property rights and church privilege was especially flagrant with the fraudulent suspension by Respondents who had clandestinely abandoned the church and had no religious or secular authority to "suspend" or "excommunicate" anyone at St. Vladimir's under Constitutional case law precedent.

Petitioners, William and Maria Turchyn, filed a Complaint on November 26, 2001, which was voluntarily dismissed by Petitioners under Civ. R. 41 (A) (1) without prejudice on February

20, 2002. Petitioners refiled a more clearly defined Complaint, which included Ohio RICO, on January 24, 2003 and Amended that Complaint on February 4, 2003 to include additional defendants and more detailed allegations of wrongdoing by the defendants.

Petitioners disclosed the existence of an estimated 10,000 pages of discovery, embracing over 600 evidentiary exhibits, to all defendants for their consideration and copying when Petitioners answered a 1st Set of Interrogatories and Request for Admissions which was dated March 3, 2003. This evidentiary material was accumulated by Petitioners despite Petitioners allegations in the Amended Complaint that the defendants "operated in secrecy" and that the identities of all co-conspirators could not be definitively identified without the benefit of discovery.

On May 5, 2003, a collective Motion to Dismiss was filed by defendants and various responsive and supplemental pleadings were filed by both sides.

On September 3, 2003 the trial court wrongfully granted defendants' Motion to Dismiss Petitioners Amended Complaint and Petitioners filed a timely appeal to the 8th District Court of Appeals.

The Appeals Court erroneously affirmed the decision of the trial court on May 27, 2004 and Petitioners request for reconsideration en banc dated June 7, 2004 was denied by the Appeals Court on June 14, 2004.

On July 27, 2004 Petitioners filed an appeal with the Ohio Supreme Court which was denied on October 27, 2004. A timely appeal to this Honorable Court followed.

The trial court's decision did not exclude, but rather ignored, 21 evidentiary exhibits submitted by Petitioners in their pleadings which included prima facie admission of voluntary church abandonment, affidavits and trial transcripts from the New Jersey proceeding that identified fraud and collusion relative to the case at bar, and prima facie evidence that Petitioners property rights in St. Vladimir's were dismantled before the controversies erupted in

1999.

As described below, the decision of the trial court and the affirmation by the Appeals Court was made without the mandatory Tibbs v. Kendrick test and based on one religious case citation, Shariff v. Rahman, that ignored the Constitutional principle that only religious belief and not secular acts committed in the name of religion is protected by the 1st Amendment. Property rights, clandestine abandonment, fraud and collusion, and illegal merger of churches are secular matters not protected by the 1st Amendment which civil courts have the right to review under Constitutional case law precedents. These allegations in Petitioners Amended Complaint were totally ignored by the Ohio courts to the prejudice of the Petitioners in violation of the 1st, 5th, and 14th Amendments of the US Constitution and Article I Section 7 of the Ohio Constitution.

The decision of the Appeals Court also triggered a claim by Petitioners of religious discrimination to the Ohio Supreme Court which was ignored.

As described below, under Ohio PCA Versus Federal RICO, Petitioners Ohio Pattern of Corrupt Activities (PCA) claim was erroneously dismissed based on two flawed case citations that ignored Petitioners pleadings of conflict in Ohio Appellate Court Districts over the legal definition of "enterprise" found in Ohio PCA as compared with the definition of "enterprise" found in Federal RICO. Petitioners Amended Complaint included specific Ohio PCA predicate offenses which the trial court and the Appeals Court also ignored in their decisions.

REASONS FOR GRANTING THE PETITION
THE ISSUE OF CIVIL RULE 8

The skeletal pleadings, which constitute the meager record before this Honorable Court, fails to determine, as a matter of law, whether Petitioner's Amended Complaint, at Appendix A13 – A68, was so deficient that petitioners were denied the opportunity to present all their evidence under the liberal standard of notice pleading of Civil Rule 8 and the guidance of Bell v. Hood, 327 US 678 (1946); Conley v. Gibson, 355 US 41 (1957); Foman v. Davis, 371 US 178 (1962); Scheurer v. Rhodes, 416 US 232 (1974); and Schiavone v. Fortune, 477 US 21 (1986) of US Supreme Court case precedent and under parallel Ohio case precedent: O'Brien V. University Community Tenants, Inc., 42 Ohio St. 2d 242 (1975); York v. Ohio State Highway Patrol, 573 N.E. 2d 1063 (1981); and Mitchell v. Lawson Milk Co., 40 Ohio St. 3d 190 (1988). Petitioners Amended Complaint satisfied the requirements of Civ. R. 8 because defendants were given fair notice of the Petitioners claims, the grounds upon which they rest, and claims for which relief can be granted. It is not beyond doubt that Petitioners could not prove any set of facts to support their claims that entitle them to relief. See Court of Appeals Application for Reconsideration, Appendix A69 – A128 and Ohio Supreme Court Memorandum at Appendix A129 – A161.

Petitioner William Turchyn, clearly stated in Paragraph 1 of the Amended Complaint, App. A19, that "he was a member in good standing of St. Vladimir's Ukrainian Orthodox Cathedral... until his civil, contractual and property rights were intentionally violated and, his [church] membership was illegally and fraudulently terminated". All State courts have subject matter jurisdiction to resolve temporal matters of a religious organization affecting civil, contractual, or property rights: Salzgaber v. First Christian Church, 583 N.E. 2d 1361 (Ohio 1989); Fast v. Smyth, 572 S.W. 2d 673 (Missouri 1975); Welter v. Seton Hall Univ., 608 A. 2d 206 (New Jersey 1992); Reid v. Sholson, 327 S.E. 2d 107 (Virginia 1985); Lozanoski v. Sarafin, 485 N.E. 2d 669 (Indiana 1985); Brown v. Mt. Olive Baptist Church, 124 N.W. 2d 445 (Iowa 1963). The trial court explicitly

recognized Petitioner's claim but failed to act upon it. App. All.

The trial court did not accept Petitioners Amended Complaint as true by unilaterally deciding that Petitioners were "former members of St. Vladimir's..." App. at All, thus ignoring Paragraph 2 of the Amended Complaint that "Plaintiff, Maria Turchyn, was and is a member in good standing of St. Vladimir's and the UOC-USA Diocese whose civil, contractual and property rights were intentionally threatened and remain under threat of injury." App. at A19.

In their Amended Complaint, App. A24-A30, Paragraphs 26-71, Petitioners alleged to be members of a congregational church incorporated under Ohio law as compared to membership in a church of hierarchical polity. A property right exists in a church of congregational polity and a court's jurisdiction is founded on it's duty to safeguard property rights inherent in church membership. Randolph v. First Baptist Church, 120 N.E. 2d 485 (1954). These same property rights invoke the protections of the 1st and 14th Amendments of the US Constitution. The 14th Amendment protections of being unjustifiably deprived of property without due process and equal protection under color of State action does not only safeguard rights of disputed ownership but extends to any significant property interest including statutory entitlements. Fuentes v. Shevin, 407 US 67 (1983). Individual entitlement of property grounded in State law cannot be removed except "for cause." Logan v. Zimmerman Brush Co., 455 US 422 (1982). A violation of the 14th Amendment may be accomplished by the State judiciary in the course of construing an otherwise valid State statute. Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 US 673 (1930). Notice and hearing, together with a legally competent tribunal having jurisdiction of the case, constitute basic elements of the Constitutional requirement of due process of law. Powell v. Alabama, 287 US 45. The State sovereign must govern impartially; the concept of equal justice under the law is served by the 5th Amendment's guaranty of due process, as well as by the equal protection clause of the 14th Amendment. Lyng v. Castillo, 477 US 635. While the 5th Amendment contains no equal protection clause, it does forbid discrimination that is so unjustifiable as to be violative of due process. Bolling v. Sharpe, 347 US 497 (1954):

THE ISSUE OF FRAUD AND COLLUSION

"Nothing we have said is intended to even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public." Connecticut v. Cantwell, 310 US 296 (1940). App, at A74. See also First Baptist Church of Glen Este v. State of Ohio, 591 F. Supp.676 (1983) at App. A75 – A76.

The Motion to Dismiss Petitioners Amended Complaint Against All Defendants cited Civil Rules 12(B) (l), 12(B) (2), 12(B) (5), 12(B) (6) and 9(B) (Failure to plead fraud with particularity). The trial court did not rule against Petitioners on 12(B) (2), 12(B) (5) and, very significantly, 9(B). App. at A109.

Petitioners Amended Complaint listed all the criteria specified by the Ohio Supreme Court to plead fraud with particularity. Burr v. Board of County of Stark City, 491 N.E. 2d 110. See App. A19, A21, A23, Paragraphs 6, 13 – 15, and 19. Mail fraud and wire fraud were separately pleaded on App. 22 and A23, Paragraphs 16 – 18 and 20. Civil courts have jurisdiction to inquire into the expulsion of some members where the expulsion is part of a fraudulent scheme by others to misappropriate or divert church property. 77 Corpus Juris Secundum at 113. Petitioners satisfied this interpretation in their Amended Complaint at App. A23 and A33 – A41, Paragraphs 23, 92 – 96, 98, 100, 102, 113 – 115, 125, 128, 132 – 133 and 136 – 138. The Appeals Court, at App. A70 – A80, and the Ohio Supreme Court, at App. A100 – A101 and App. A144 – A147, ignored Petitioners Amended Complaint and case citations and arguments that the alleged acts of fraud and collusion established subject matter jurisdiction and presented a case of first impression of Constitutional dimension.

In Serbian Orthodox Diocese v. Milivojevich, 426 US 696 (1976), this Honorable Court reviewed and summarized the role of civil courts in reviewing ecclesiastical decisions by reviewing Watson v. Jones, 13 Wall. 679 (1872), Gonzalez v. Archbishop, 280 US 1 (1929), and Presbyterian Church v. Hull Church, 393 US 440 (1969):

> "Thus, although Watson had left civil courts no role to play in reviewing ecclesiastical decisions during the course of resolving church property disputes, Gonzalez first adverted to the possibility of "marginal court review,"

> Presbyterian Church v. Hull Church, supra, at 447, in cases challenging decisions of ecclesiastical tribunals as products of "fraud, collusion or arbitrariness." However, since there was "not even a suggestion that [the Archbishop] exercised his authority arbitrarily," 280 US, at 18, the suggested "fraud, collusion or arbitrariness" exception to the Watson rule was dictum only. And although references to the suggested exception appear in opinions in cases decided since the Watson rule has been held to be mandated by the First Amendment, 6/no decision of this Court has given concrete content to or applied the "exception." [Footnote 6] see Kedroff v. St. Nicholas Cathedral, 344 US 94, 115 – 116, and n.23 (1952); Presbyterian Church v. Hull Church, 393 US 440 – 447, 450 – 451, and n.7 (1969); MD & VA. Churches v. Sharpsburg Church, 396 US 367, 369 n.3 (1970).

As a case of first impression, is fraud and collusion an exception of Constitutional dimension to Watson v. Jones, supra, in a church of congregational or hierarchical polity?

THE ISSUE OF CLANDESTINE ABANDONMENT

Petitioners Amended Complaint alleged that the acts and conduct of the defendants established prima facie subject matter jurisdiction that defendants clandestinely and voluntarily abandoned St. Vladimir's and the UOC-USA Diocese for the surreptitious unification with the Church of Constantinople. App. A31 – 34 and A43, Paragraphs 85 – 89, 91, 96 – 97, and 150 – 151. In Bouldin v. Alexander, 82 US 131 (1872), this Honorable Court stated:

> "It may be conceded that withdrawal from a church and uniting with another church or denomination is a relinquishment of all rights in the church abandoned… Although the civil courts will not, in the case of persons excommunicated by competent church authority, go behind that authority and inquire whether the persons have been regularly or irregularly excommunicated, such courts may inquire whether the expulsion was the act of the church or of persons who were not the church, and who, consequently had no right to excommunicate anyone."

See also Nealy v. Butler, 187 SO. 2d 658 (1966) and Eastern Orthodox Catholic Church in America, Inc., V. Adair, 141 N.Y.S. 2d 772 (1955). Under Ohio case law, two religious cases resemble the abandonment case at bar: Romanian Orthodox Missionary Episcopate of America v. Trutza, 120 F. Supp. 183 (USDCND Ohio 1972) and Russian Orthodox Greek Catholic Church v. Burdikoff, 189 N.E. 2d 451 (1962). In the Trutza case, defendant Trutza "surreptitiously, and with the clear intent to conceal his activities, went to Bucharest to be there consecrated a Bishop," and in the Burdikoff case, defendant Burdikoff "had breached contract by submitting himself to former hierarchy and attempting to withdraw the church from local autonomous hierarchy." In both instances the Courts recognized the deceptions and ruled accordingly in favor of plaintiffs. Ohio case law relative to abandonment is found in Hamilton v. Hartville, 577 N.E. 2d 1125 (1989) (In order for an abandonment to exist, affirmative proof of the intent to abandon coupled with acts or omissions implementing the intent must be shown) and Mooney v. Greer, 466 N.E.2d 1135 (1982) (Abandonment is a question of fact for the trier of fact).

The trial court ignored Petitioners Amended Complaint alleging abandonment and Bouldin v. Alexander, supra, when it ruled:

> "THE COURT ALSO NOTES THAT PLAINTIFFS' CLAIMS AS TO WILLIAM TURCHYN'S "SPIRITUAL SUSPENSION" REQUIRE: INTERPRETATION OF ECCLESIASTICAL ISSUES OF RELIGIOUS GOVERNANCE AND THE COURT DECLINES TO EXERCISE JURISDICTION OVER INTERNAL PARISH PROCEDURE, FINDING IT MORE PROPERLY A MATTER FOR CHURCH DISCIPLINE. SHARIFF V. RAHMAN, (APRIL 21, 2003), CUYAHOGA COUNTY APP. NO. 80745,
> 2003-OHIO-1354345." App. at A12.

In affirming the decision of the trial court, the Appeals Court also ignored the abandonment arguments, App. at A74, and the Ohio Supreme Court, in declining jurisdiction to hear the case, App. Al, equally ignored the Bouldin v. Alexander argument, at App. A148.

It is very significant that Bouldin v. Alexander, supra, was decided by this Honorable Court eight months after Watson v. Jones, supra, was decided citing the decision of Watson v. Jones, supra.

As a case of first impression, is abandonment under Bouldin v. Alexander, supra, an amendment to or an exception of Constitutional dimension to Watson v. Jones, supra, in a church of either congregational or hierarchical polity?

THE ISSUE OF TIBBS v. KENDRICK

In affirming the decision of the trial court, the Appeals Court egregiously ignored the totality of Petitioners Amended Complaint and shocked the conscience by invidiously discriminating against Petitioners by failing to interpret legal precedent correctly:

"In Tibbs V. Kendrick (1994), 93 Ohio App. 3d 35, 43, 637 N.E. 2d 397, this court set forth a two-step analysis to determine whether a court has subject matter jurisdiction to resolve a dispute between church members. First, the court must determine whether the church is a hierarchical or congregational church. Id. If the church is hierarchical, the court must decline jurisdiction. If the church is congregational, the court must determine whether the controversy involves ecclesiastical or secular issues. If the controversy is determined to be ecclesiastical, the court must decline jurisdiction. Id. Here, regardless of whether of whether St. Vladimir's is a hierarchical or congregational church, the propriety of suspending a parishioner's privilege to receive Holy Communion is purely an ecclesiastical issue. [See] Shariff v. Rahman..." (emphasis added) App. at A7 – A8.

The Appeals Court truncated the mandate of Tibbs V. Kendrick, supra, by ignoring the additional critical requirement that:

> "In order for this court to determine whether the lower court has subject matter jurisdiction over the controversies presented by the case sub judice, this court MUST review appellants complaint to determine whether the controversies presented in each count require determination of ecclesiastical or secular issues."

(emphasis added) App. at 71.

The Appeals Court egregiously ignored the totality of the Tibbs v. Kendrick, supra, mandate by not reviewing, sub judice, Petitioners Amended Complaint and ignoring the differences in polity made evident by Tibbs v. Kendrick, supra, between churches of congregational and hierarchical polities. See App. A70–A80 for argument and case citations ignored by the Appeals Court.

A congregational church is a "self-governing entity, not subject to the control of any higher ecclesiastical judicature," while the "hierarchical church is defined as a member of a larger religious organization and subject to its rules and regulations." 81 Ohio Jur. 3d, Type of Church Government, at 9.

In addition to fraud and abandonment, Petitioners had also alleged in their Amended Complaint that a non-statutory "merger" that deprived Petitioners of property rights in a congregational church had been effected by fraud and subterfuge by defendants that placed St.Vladimir's and the UOC-USA Diocese illegally under the jurisdiction of the hierarchical Church of Constantinople. App. A44 – A48, Paragraphs 159-165 and 174-177. The Appeals Court erroneously concluded twice that St. Vladimir's "chose to be affiliated" with the Church of Constantinople, conclusions not supported by Petitioners Amended Complaint or pleadings, thus distorting Petitioners allegations that no statutory "merger" had occurred. App. at A104 – A109. Also, see App. A80 – A87 for argument and case citations ignored by the Appeals Court as to the following submitted Proposition of Law:

> "2. BECAUSE NEITHER THE TRIAL COURT NOR THE APPEALS COURT FOLLOWED THE MANDATORY TIBBS, SUPRA, TEST, THE PROPERTY DISPUTE WAS ERRONEOUSLY DECIDED BY DEFAULT IN FAVOR OF DEFENDANTS IN VIOLATION OF THE US CONSTITUTION'S 1ST AMENDMENT FREE EXERCISE CLAUSE WHICH PROTECTS RELIGIOUS OBSERVERS AGAINST UNEQUAL TREATMENT AND THE ESTABLISHMENT CLAUSE WHICH PROHIBITS THE JUDICIAL, LEGISLATIVE OR EXECUTIVE BRANCHES OF GOVERNMENT FROM

ESTABLISHING A CHURCH OR FAVORING ONE CHURCH OVER ANOTHER BEYOND STRICT NEUTRALITY. PLAINTIFF'S 5TH AND 14TH AMENDMENT GUARANTEES WERE EQUALLY VIOLATED WITHOUT DUE PROCESS AND EQUAL PROTECTION WITH THE DEFAULT JUDGMENT."

By neglecting to conduct the mandatory Tibbs v. Kendrick, supra, legal test, the trial court and the Appeals Court egregiously committed acts of religious discrimination to the prejudice of the Petitioners in violation of the 1st, 5th, and 14th Amendments of the US Constitution and Article I Section 7 of the Ohio Constitution via disparate treatment. App. A14 – A143:

"…Plaintiffs s were religiously discriminated against by the trial court and the appeals court when plaintiffs extensive pleadings were ignored and plaintiffs' were intentionally denied the mandatory legal test of Tibbs, supra [i.e. polity of a Christian Church] which was not denied by Ohio courts to Bhatti v. Singh, 773 N.E. 2d 605, 609 – 610 [i.e. polity of Indian Sikh temple] and Shariff v. Rahman, 787 N.E. 2d 72 [i.e. polity of a Muslim mosque]."

See also App. A152 – A153:

"In yet another act of religious discrimination based on disparate treatment, plaintiffs were denied a legal review by the trial court and the appeals court of the alleged non-statutory "merger" of St. Vladimir's with the Church of Constantinople which another Ohio court did not deny to another church. Amanda Baptist Church v. Cornerstone Baptist Church, Inc., 1911 WL 259566, Ohio App. 3d Dist., unpublished, ruling that a consolidation was void having not been ratified pursuant to ORC 1715.08."

In Ohio, the creation of a new religious corporation by the consolidation of two separate religious corporations can only be effected by conforming to the statutes governing such consolidation. 81 Ohio Jur. 3d, Consolidation and Merger, at 36.

When the trial court and the Appeals Court ignored the alleged "merger" the effect was "to arbitrarily create a strange, new church of unknown polity" and coercing Petitioners "by judicial fiat to recognize and support that new church with a "take it or leave it" indifference without a ruling on defendants

abandonment and fraudulent misrepresentations and concealment of St. Vladimir's "merged identity." See App. A149 – A153 for argument and case citations that the Ohio Supreme Court ignored.

THE ISSUE OF SHARIFF v. RAHMAN

The trial court and the Appeals Court placed exclusive reliance on Shariff v. Rahman, supra, to justify dismissing Petitioners Amended Complaint for lack of subject matter jurisdiction. Even if it was inadvertent error, and not invidious discrimination, for the trial court, the Appeals Court, and the Ohio Supreme Court to have overlooked the Tibbs v. Kendrick, supra, test, was it invidious discrimination for the Appeals Court and the Ohio Supreme Court to have totally ignored Petitioners analysis of Shariff v. Rahman, supra? See App. A77 – A78 and the Ohio Supreme Court at App. A1 47 – Al 48:

"The Shariff citation has limited relevance and application to the case at bar. To distinguish Shariff from the Turchyn case, one should know that plaintiffs in the Shariff case did not do the following:

1. Did not exhaust internal administrative procedures to resolve the dispute;
2. Did not allege fraud, collision and conspiracy on the part of the defendants;
3. Did not allege violations of civil, contractual and property rights;
4. Did not allege the voluntary and clandestine abandonment of one religious jurisdiction for another by hierarchs, clergy and laity;
5. Did not allege the non-statutory "merger" or "consolidation" of two church jurisdictions of different polity without the approval of the congregation;
6. Did not allege "suspension" or "excommunication" of a plaintiff by defendant who had absolutely no legal right to do so;
7. Did not allege theft of parish property and the fraudulent acquisition of parish properties, resulting from the "merger," under both common law and Ohio PCA theories of law;

8. Did not allege 1st, 5th and 14th Amendment violations of the US Constitution and Article I Sections 1, 5, 7 and 16 of the Ohio Constitution.

The plaintiffs in the Shariff case had adequate access to the court, in the form of a bench trial, and did not ask the court for the resolution of parish property ownership under "Neutral Principles of Law" as defined by the US Supreme Court in MD. and VA. Churches v. Sharpsburg Church, 396 US 367, 370 (1970) because there was no need to. The mosque in the Shariff case was recognized by the court to be of congregational polity."

In Ohio, Neutral Principles of Law are utilized to resolve disputes over possession and control of church property. Serbian Orthodox Church of St. Demetrius v. Keleman, 256 N.E. 2d 212 (1970). Petitioners requested in their Amended Complaint that the court, "Declare the congregational polity and ownership of St. Vladimir's via Neutral Principles of Law." App. at A54, Point K. This request was ignored thus depriving petitioners of property under color of state action.

Petitioners have not deviated from the position that St. Vladimir's is a church of congregational polity in their Amended Complaint and extensive pleadings. Petitioners had submitted to the trial court the Articles of Incorporation and the Constitution and By-Laws which clearly illustrate congregational polity as a matter of law that both the trial court and the Appeals Court ignored in their decision-making process:

> "By contrast, in Paragraph 128 of Plaintiff's Amended Complaint, "Plaintiff, William Turchyn, states and alleges that the UOC-USA Diocese had made an "in trust" legal claim to all parish properties and assets on or about June 9, 1999 which defendant, Nakonachny, supported with the fraudulent claim in said letter of August 3, 1999 that [St. Vladimir's] "WE ARE NOT A CONGREGATIONAL PARISH." [The letter of August 3, 1999 is prima facie evidence of mail fraud, an Ohio PCA predicate offense]."App. at A79.

A significantly more relevant and important decision than Shariff v. Rahman, supra, rendered by the Court of Appeals 8th District, was Iwanchuk v. Swaszenko, No. 902018, unpublished, June 17,

1976, which the Court of Appeals 8th District ignored to the prejudice of the Petitioners:

> "...the courts jurisdiction is founded on and confined to its duty to safeguard property rights inherent in [congregational] church membership...Defendants' actions have infringed upon plaintiffs' property rights...THE PASTOR...IMPROPERLY TRANSFERRED THE [PARISH] TO THE GREEK ORTHODOX DIOCESE WITHOUT THE PERMISSION OR THE SANCTION OF THE PARISHIONERS." (emphasis added) App. at A79.

Consequently, there remains the unresolved dispute as to the polity of St. Vladimir's and ultimately who owns and controls the property and assets of St. Vladimir's because it is axiomatic that parishes under the jurisdiction of a hierarchical church hold the parish properties in trust for the Bishops of the hierarchical church.

THE ISSUE OF OHIO PCA VERSUS FEDERAL RICO

The Ohio General Assembly enacted Ohio's version of Federal RICO on June 20, 1985. These statutes, RC 2923.31-2923.36 of the Ohio Revised Code, took effect on January 1, 1986 and are collectively known as the Pattern of Corrupt Activities Act or PCA. RC 2923.31 (I) defines Corrupt Activity which "means engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing or intimidating another person to engage in" conduct comprising five categories of violations including Federal RICO offenses listed in 18 U.S.C. 1961 (1) (B). Under 1961 (1) (B), Section 1341 (mail fraud) and Section 1343 (wire fraud) are predicate offenses of PCA.

The elements of any PCA claim can include RC 2923.32 (A) (1): "No person employed by, or associated with, any enterprise shall conduct or participate in, directly or indirectly, the affairs of the enterprise through a pattern of corrupt activity or through the collection of an unlawful debt" or RC 2923.32 (A) (2): "No person through a pattern of corrupt activity or the collection of an unlawful debt, shall acquire or maintain, directly

or indirectly, any interest in, or control of, any enterprise or real property." The Ohio General Assembly intended strict liability under RC 2923.32 (A) (l) and (A) (2). State v. Schlosser, 681 N.E. 2d 914 (1997).

The three elements of a PCA claim under RC 2923.32 are (1) that the defendant was involved in corrupt activity under RC 2923.31 (I); (2) that the defendant was involved in RC 2923.32 (E) "Pattern of corrupt activity" means two or more incidents of corrupt activity .."and (3) the defendant committed the pattern of corrupt activity via an enterprise under RC 2923.31 (C): "Enterprise" includes any individual, sole proprietorship, partnership, limited partnership, corporation, trust, union, government agency, or other legal entity, or any other organization, association, or group of persons associated in fact although not a legal entity. "Enterprise" includes illicit as well as licit enterprises." The pattern of corrupt activity is demonstrated by the fact that the predicate offense was committed. State v. Schlosser, supra, at 915.

The pattern definition of RC 2923.32 (E) uses the word "means" indicating that the definition is complete and self-contained within the Ohio PCA statutory definition rather than what it "requires" as found in Federal RICO. [Compare RC 2923.32 (E) to Sedima. S.P.R.L. v. Imrex Co., 473 US 479, 496 n. l4 (1985) (pointing out that the definition of pattern set forth in Federal RICO under 18 U.S.C. 1961(5) "states that a pattern 'requires at least two acts of racketeering activity,' not that it 'means' two such acts")]. For other differences between Federal RICO and PCA see State v. Lang, No. 92CA3, 1993 WL 26758 (Ohio Ct. App. 2 Dist. 1993): "while Ohio's RICO provisions are modeled on the federal, Ohio's test for a "pattern" of corrupt activity is set out in RC 2923.31 (E). It does not include the particular "continuity" requirement imposed in H.J., Inc. v. Northwestern Bell Telephone Co., 492 US 229 (1989). That requirement is not of constitutional dimension or order. Therefore, Ohio's requirement governs and we are not bound by federal requirements in these respects."

The Ohio General Assembly deviated PCA from the Federal RICO prototype in other significant areas. State v. Schlosser, supra, at 914 – 915. The broad language of RC 2923.31

(I) has resulted in liability under PCA where Federal RICO would not attach [Although PCA does not contain a separate conspiracy provision, the "conspiring to engage in" language of RC 2923.31 (I) is punishable as a violation of the general conspiracy statute under RC 2923.01. Engaging in corrupt activity and conspiring to engage in corrupt activity are not allied offenses of similar import. See State v. Conley, CA-90-11-023, 1991 WL 129796 (Ohio App. 12 Dist., July 15, 1991)]. One of the most important departures of PCA from the Federal prototype is that RC 2923.32 (A) (2) permits proof of a violation without the need to establish an "enterprise."

The trial court and the Appeals Court used the case citations of Universal Coach v. NYC Transit Auth., 629 N.E. 2d 28, 32 – 33 (Ohio App. 8 Dist. 1993) and Patton v. Wilson, Cuyahoga app. No. 82079, 2003—Ohio—3879 (June 26, 2003) to justify dismissal of Petitioners Amended Complaint for failing to establish a PCA "enterprise." This justification is erroneous and legally flawed because the original judicial analysis of Universal Coach v. NYC Transit, supra, was flawed and erroneous. The court misinterpreted Ohio PCA by subjugating Ohio PCA to Federal RICO statutes and case precedent instead of to the intent of the Ohio General Assembly and Ohio PCA case precedent:

> "Count one of the complaint alleges that (defendant) through three separate but related "fraudulent schemes," violated the Ohio Corrupt Activity Act, RC 2923.32 et seq. A review of Ohio case law fails to disclose any precedent which would clearly guide this court. The Ohio Corrupt Activity Act, however is directly adopted from the federal RICO… The United States Supreme Court and numerous federal courts have examined the elements required to establish a RICO violation:
> (l) conduct…(2)…pattern of corrupt activity… (3) the defendant has participated in the affairs of an enterprise and has acquired and maintained an interest in or control of an enterprise. Sedima, S.P.R.L. v. Imrex Co. (1985) 473 US 479…Plaintiffs complaint fails to disclose…a pattern of corrupt activity which consisted of two or more incidents of corrupt activity as prohibited by RC 2923.31

(I) (H.J., Inc. v. Northwestern Bell Tel. Co. (1989), 492 US 229; Sedima, S.P.R.L. v. Imrex Co., supra); and (3) that an enterprise existed separate and apart from (defendant) through which (defendant) acted (Federal case citations omitted)." (emphasis added)

The Universal Coach v. NYC Transit, supra, analysis ignored the pre-existing and seminal Ohio PCA case law precedent found in State v. Lang, supra, State v. Conley, supra, State v. Thrower, 575 N.E. 2d 863, 873 – 874 (1989) ("RC 2923.31 specifically includes definitions not only of "pattern" but "enterprise". State v. McDade, No. 90 CA 46, 1991 WL 244676 (Ohio App. 2 Dist. 1991) which also correctly defined "enterprise" and "pattern of corrupt activity" under state statute, and State v. Rich, 621 N.E. 2d 1352 (Ohio App. 9 Dist. 1993) ("In interpreting statutes, the court must give effect to the words used, and not delete words used or insert words not used.") Consequently, "The weight of federal case law diminishes in proportion to the degree of [the statute's] deviation from the federal RICO statute." Donald C. Ligorio, Ohio's Pattern of Corrupt Activities Law: Ohio Revised Code Sections 2923.31 – 36 17 U. Dayton Law Rev. 279, 286 (1991).

Sedima, S.P.R.L. v. Imrex, supra, was decided by the US Supreme Court on July 1, 1985 and not codified into Ohio PCA by the Ohio General Assembly. Similarly, H.J., Inc. v. Northwestern Bell, supra, was decided in 1989 and not codified.

The decisions of the US Supreme Court such as Sedima S.P.R.L. v. Imrex, supra, and H.J., Inc. v. Northwestern Bell, supra, arguably depended less upon the text of the Federal RICO statute than upon its legislative history in Congress. Since Federal RICO's Congressional history is not that of the State of Ohio, the application of cases based upon that history to the interpretation of Ohio PCA statutes is open to Constitutional question. This conclusion becomes very apparent because at least one Federal Court in Ohio has erroneously concluded that "Ohio courts have found that the elements for a PCA conviction are the same as those for a RICO claim" under the Universal Coach v. NYC Transis, supra, analysis. See Matthews v. New Century Mortg. Corp., 185 F. Supp. 2d 874, 891 (S.D. Ohio 2002) and Board of Trustees Sabis Intern. Sch. v. Montgomery, 205 F. Supp. 2d 835, 854 (S.D.

Ohio 2002) (emphasis added)

Compare Universal Coach v. NYC Transit, supra, Matthews v. New Century, supra, and Board of Trustees v. Montgomery, supra, with Iron Workers Local No. 17 v. Philip Morris, 23 F. Supp. 2d 771, 786 – 788 (N.D. Ohio 1998):

> "To decide whether plaintiffs allege sufficient facts to avoid dismissal on standing grounds, the Court first examines the Ohio RICO law. In doing so, this Court is mindful that determinations of proximate cause, standing and remoteness are particularly matters of policy. Accordingly, courts should he especially respectful of legislative decisions... Even a cursory review shows that the Ohio General Assembly largely patterned the Ohio Corrupt Activities Act after the federal course of action. Yet while similar, the Ohio General Assembly made obvious and significant departures. Most pertinent to the issues here, the Ohio General Assembly stated that persons injured both directly and indirectly by violations of 2923.32 had standing to bring an action under Ohio's RICO lae... In choosing to broaden standing to bring RICO actions under state law, the Ohio General Assembly decided to widen the right to bring and action. Such determination is clearly a policy matter. Making this decision is within the prerogative of the legislature. Courts need show extreme deference to the policy determinations of the popularly elected
> legislature."

Petitioners argument and case citations that "Judicial interpretation by the trial court and the Appellate Court redefined the clear intent of the General Assembly" was ignored by the Appeals Court. App. A87 – A98.

Petitioners argument that RC 2923.32 (A) (2) does not require the allegation of an enterprise in order to be triggered and establish subject matter jurisdiction was ignored by the Appeals Court. App. at A99 – A100. There was no judicial insight as to how the trial court and the Appeals Court ignored Petitioners Amended Complaint alleging RC 2923.32 (A) (2) violations and then concur in their opinions that Petitioners failed to establish a PCA enterprise.

There is no judicial insight of exactly how the Appeals Court, without applying the mandatory test of Tibbs v. Kendrick, supra, concurred with the trial court that Petitioners "blanket allegations of wrong doing" did not satisfy PCA while ignoring Petitioners argument that RC 2923.32 (I) was satisfied with specificity:

"Plaintiffs' Amended Complaint specifically alleged as predicate offenses of Ohio PCA the following enumerated offenses which the trial court and the Appeals Court ignored: ORC 2923.32 (A) (I), 2923.32 (A) (2), 2923.01, 2923.03, 1315.55, 2905.11, 2913.02, 2913.51, 18 U.S.C. 1341 and U.S.C. 1343." App, at A99.

Because it was impossible for Petitioners to comply with two sets of dueling PCA interpretations, Petitioners raised the issue of conflict in Ohio's Appellate Courts which the Appeals Court ignored. App. at A116 – 120. The same issue was raised at the Ohio Supreme Court and was also ignored. App. A156 – A159:

"Proposition of Law No. VII: Unresolved conflict exists in Ohio Appellate Courts pertaining to the statutory definition of "enterprise" in RC 2923.31 (C) of Ohio's Pattern of Corrupt Activities statute. The issue before the Ohio Supreme Court is whether the definition of the word "enterprise" as used in the Ohio PCA is independent of the word "enterprise" as used in the Federal RICO Statute? The reason we raise this issue is because of the cases cited by the defendants and the trial court, namely Universal Coach Inc. v. NYC Transit Auth., (1993) Ohio App. 3d 284, 291 and Patton v. Wilson, Cuyahoga App. No. 82079, 2003—OHIO—3879 which conflicts with the decisions of other Ohio Appellate Districts which we also raised in the Court of Appeals below. The Eighth District Court's failure to either certify this conflict to you, the Ohio Supreme Court, to decide or to at least make an initial determination on its own resulted in a denial of plaintiffs' 1st, 5th and 14th Amendment Protections of the US Constitution and Article 1 Section 7 of the Ohio Constitution."

Plaintiffs stated a statutorily correct definition of an Ohio PCA "Enterprise" in their Amended Complaint at Paragraph 9: "The "enterprise" as defined in ORC 2923.31 (C) is St. Vladimir's. The enterprise is a LEGAL ENTITY that has an on-going business separate and apart from the pattern of corrupt activity and conspiracy alleged herein. Each of the defendants was

employed by or associated with St. Vladimir's. "Plaintiffs definition of an Ohio PCA "enterprise" is in total harmony with the Ohio Supreme Court definition of an Ohio PCA "enterprise" definition. See State v. Schlosser, 681 N.E. 2d 911, 914 (Ohio 1997).

Patton V. Wilson, supra, conflicts with an earlier ruling, State v. Wilson, 682 N.E. 2d 5 (Ohio App. 9 Dist. 1996) which held that "Ohio courts, unlike their federal counterparts, have not defined enterprise in such a way that a defendant may be convicted of those offenses only if he or she was associated with an "enterprise" that had an existence separate and apart from the corrupt activity. State v. Habash, (Jan. 31, 1996), Summit App. No. 17073, unreported 1996 WL 37752. Rather, a defendant may be convicted of those offenses if he was employed by or associated with any entity that meets the statutory definition of an "enterprise."

Patton v. Wilson, supra, cites the ambiguities of Federal RICO case law that are not found in the well-defined Ohio PCA statute RC 2923.31 (C) which defines the word "enterprise" differently. In State of Ohio v. Zorn, (Ohio App. 2 Dist. 1999), WL 64254, unpublished the court stated: "The Tenth District Court of Appeals of Ohio has followed [Federal case law] in requiring the three federal elements of an enterprise to be proved for conviction. State v. Warren, (Dec. 31, 1992), Franklin App. No. 921 unreported. The Court of Appeals in the Eighth District has also relied on federal interpretations of the RICO statute in holding the federal requirement that the structure of an enterprise be separate and apart from the predicate acts must be satisfied for the existence of an enterprise to be proven under the Ohio Corrupt Activity Statute. US Demolition and Contracting v. O'Rourke Const. Co., (1994), 94 Ohio App. 3d 75, 84 – 85, 640 N.E. 2d 235; Universal Coach, Inc. v. New York Transit Auth., Inc., (1993), 90 Ohio App. 3d 737, 742, 682 N.E. 2d 5.

Although the State concedes that a conviction under the Ohio Corrupt Activity Statute requires proof on all three of the federal elements constituting an enterprise, Ohio courts have not wholeheartedly embraced that position. Our sister court in the Ninth District, for instance, has rejected the notion that an enterprise must possess the attributes described in the three federal

elements. State v. Wilson, 1996), 113 Ohio App. 3d 737, 742, 685 N.E. 2d 5. The court has reasoned that the legislature's broad definition of enterprise in RC 2923.31 (C) "encompasses informal, unstructured associations and even a single individual," and is incompatible with a requirement that formal structure, continuous existence, or existence separate from the criminal activity in which it engages be shown. State v. Habash, (Jan. 31, 1996), Summit App. No. 17073, unreported. This court, along with the Fifth District Court of Appeals, has resolved cases questioning the existence of an enterprise under the corrupt activity statute without reference to the federal requirements. State v. McDade, (Nov. 20, 1991) Miami App. No. 90 CA 46, unreported; State v. Kinsey, (Nov. 30, 1995) Holmes App. No. CA-515, unreported. Instead, we applied the facts before us to the statutory definition of "enterprise" found in RC 2923.31 (C) without resort to the federal elements and found that the existence of an enterprise was proved."

The unresolved conflict in Ohio Appeals Courts over the interpretation of Ohio PCA has also denied and deprived Petitioners guarantees found in Sections 1.01 (Inalienable Rights), 1.16 (Redress in Courts), and 2.26 (Uniform application of laws in the State) of the Ohio Constitution. The Eighth District Court of Appeals abused their legal duty under Section 4.03 (B) (4) of the Ohio Constitution to certify a conflict to the Ohio Supreme Court and the Ohio Supreme Court abused its discretionary power to prevent a manifest miscarriage of justice under Section 4.02 (B) (2) (e) by ignoring the conflict and the totality of Petitioners Amended Complaint and arguments in support of.

Petitioners properly pleaded Ohio PCA claim involves a property claim in a congregational church, thus invoking the Religious Clauses of the 1st Amendment and the protections of the 14th Amendment against the unjustified deprivation of property by State action.

Petitioners believe that the judicial interpretation of Universal Coach v. NYC Transit, supra, was flawed and has created invidious discrimination with disparate and arbitrary treatment in State and Federal Courts that is offensive to the US Constitution. Because of this allegedly flawed interpretation which has led to unresolved conflict in Ohio Appellate Courts when

defining the "enterprise" element of Ohio PCA, were Petitioners deprived of and denied the protections and guarantees of the 1st, 5th, and 14th Amendments of the US Constitution?

Under the Supremacy Clause, Article VI of the US Constitution, everyone must follow Federal law in the face of conflicting State law. "A state statute is void to the extent that it actually conflicts with a valid federal statute" and that [a] conflict will be found either where compliance with both federal and state law is a physical impossibility" or where the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Edgar v. Mite Corp., 457 US 624, 631 (1982). Otherwise valid state laws or court orders cannot stand in the way of a federal court's remedial scheme if the action is essential to enforce the scheme. Stone v. City and County of San Francisco, 968 F. 2d. 850, 862 (9th Cir. 1992), cert. denied, 113 S. Ct. 1050 (1993).

Because conflict exists in interpreting Ohio PCA in the State and Federal Courts, does the effect of Federal RICO legislation by Congress oust Ohio PCA as enacted by the Ohio General Assembly under the Supremacy Clause, Article VI, of the US Constitution?

CONCLUSION

For the foregoing reasons this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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FILED
OCT. 27, 2004

The Supreme Court of Ohio

William Turchyn et. al., Appellants, v. Rev. John R. Nakonachny et. al., Appellees.	Case No. 04-1214 ENTRY

Upon consideration of the jurisdictional memoranda filed in this case, the Court declines jurisdiction to hear the case.

(Cuyahoga County Court of Appeals; No. 83557)

[S] _____

THOMAS J. MOYER
Chief Justice

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 83557

WILLIAM TURCHYN, ET. AL.,	:	
Plaintiffs-Appellants	:	JOURNAL ENTRY
	:	and
vs.	:	OPINION
	:	
REV. JOHN R. NAKONACHNY, ET. AL.,	:	
Defendants-Appellees	:	

DATE OF ANNOUNCEMENT OF DECISION	:	MAY 27, 2004
CHARACTER OF PROCEEDING	:	Civil appeal from
	:	Common Pleas Court
	:	Case No. 492675
JUDGMENT	:	AFFIRMED
DATE OF JOURNALIZATION	:	_____

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and

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MICHAEL J. CORRIGAN, A.J.:

William Turchyn and Maria Turchyn (collectively, "appellants"), appeal the trial court's decision granting appellees'[1] joint motion to dismiss appellants' amended complaint for failure to state a claim and lack of subject matter jurisdiction.

The gravamen of appellants' lengthy amended complaint is two-fold. First, appellants allege that, as parishioners of St. Vladimir's Ukrainian Orthodox Church ("St. Vladimir's"), they were harmed when their diocese, the Ukrainian Orthodox Church of the United States of America (interchangeably referred to as "UOC-USA" or "diocese"), decided in 1995 to be recognized by and fall under the spiritual direction of the Ecumenical Patriarch in Turkey. It appears that appellants disapproved of the UOC-USA's decision as they preferred St. Vladimir's (and the diocese) to be directly affiliated with the Orthodox Church in Kiev, Ukraine. Second, William Turchyn alleges that he was harmed when the clergy of St.Vladimir's decided in 1999 to place him on "spiritual suspension" surrendering his "privilege to receive the Mystery of Holy Communion" for his "actions...opposite to the teachings of the Holy Ukrainian Orthodox Church." Appellants allege that both the 1995 decision and the 1999 decision constituted a pattern of corrupt activity, fraud, and a scheme to defraud St. Vladimir's members of property and assets.

Appellees filed a joint motion to dismiss, arguing that the trial court lacked subject matter jurisdiction because appellants' claims depended upon resolution and review of religious doctrine

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[1] The appellees consist of appellants' pastor and deacon, 20 current or former members of the Board of Trustees of St. Vladimir's Ukrainian Orthodox Church, and the Metropolitan of Ukrainian Orthodox Church of the United States of America. They include John R. Nakonachny, Geofrey Greenleaf, Greenleaf Capital Management, Helen Greenleaf, Fr. Deacon Ihor Mahlay, Metropolitan Constantine, Archbishop Antony, Rev. Volodymyr Steliac, Rev. Dennis Kristof, Michael Kominko, Steven Gregory Pawuk, Paul Burlij, Jack Burscu, Lydia Schkurko, Wasyl Kotelewec, Eugene Boyko, Michael Dobronos, Sr., Hans Harasimchuk, Alex Hutnik,. Lucy Komichak, Roman Malysz, Iwan Michailuk, Wasyl Ponomarenko, Olga Samocha, Deborah Sirko-Osadsa, Eugene Wrubel, Dr. Anaolij Lysyj, Rev. Frank Estocin, Michael Heretz, and John and Jane Does.

and that appellants failed to state a valid claim upon which relief can be granted under R.C. 2923.31 et seq., Ohio's Pattern of Corrupt Activity Act ("Ohio RICO"). Appellants filed a brief in opposition to appellees' joint motion to dismiss, as well as three supplemental briefs. By leave of court, appellees filed a reply memorandum in support of their joint motion to dismiss.

The trial court, in granting appellees' joint motion to dismiss for "failure to state a claim and lack of subject matter jurisdiction," reasoned as follows:

"Under Ohio RICO, '[n]o person employed by, or associated with any enterprise shall conduct or participate in, directly or indirectly, the affairs of the enterprise through a pattern of corrupt activity.' Ohio Rev. Code 2923.32 (A)(1). To state a valid claim under RICO, plaintiffs must plead with particularity: (1) conduct of defendants which involves the commission of two or more specifically prohibited state or federal criminal offenses; (2) the prohibited criminal conduct of the defendants constitute a pattern of corrupt activity; and (3) the defendants have participated in the affairs of an enterprise or has [sic] acquired and maintained interest in or control of an enterprise. Universal Coach, Inc., v. New York City Transit Authority, 90 Ohio App. 3d 284, 291. The court finds that plaintiffs' blanket allegations of wrongdoing on the part of church officials and parishioners do not satisfy the Universal Test. Additionally, plaintiffs' allegations neither meet the definition of 'corrupt activity' as defined by Ohio Rev. Code 2923.31(I), nor do they sufficiently establish the existence of an 'enterprise' acting apart from the patter[n] of activity in which i[t] engages. Patton v. Wilson (Jun. 26, 2003), Cuyahoga County App. No. 82079, 2003-WL-21473566. The court also notes that plaintiffs' claims as to William Turchyn's 'spiritual suspension' require interpretation of ecclesiastical issues of religious governance and the court declines to exercise jurisdiction over internal parish procedure, finding it more properly a matter for church discipline. Shariff v. Rahman (Apr. 21, 2003), Cuyahoga County App. No. 80745, 2003-Ohio-1354345."

Appellants now appeal, asserting four assignments of error.

For their first assignment of error, appellants contend that the trial court abused its discretion when it converted appellees'

joint motion to dismiss into a motion for summary judgment without notifying all parties and not permitting appellants adequate time for discovery. Appellants' contention, however, is wholly inaccurate as there is nothing in the record before us that suggests that the trial court converted appellees' joint motion to dismiss, based on lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted, into a motion for summary judgment. The trial court specifically ruled upon and granted appellees' joint motion to dismiss. Thus, appellants' first assignment of error is overruled.

In their second and third assignments of error, appellants contend that the trial court abused its discretion when it found that it lacked subject matter jurisdiction over their claims. Specifically, appellants assert that the trial court had jurisdiction to determine whether St. Vladimir acted appropriately when the diocese and St. Vladimir's chose to be affiliated with the Ecumenical Patriarch in Turkey and when the clergy of St. Vladimir's suspended William Turchyn's right to receive Holy Communion. Appellants' assertions are without merit.

It should be noted that the trial court did not dismiss appellants' claims as to the 1995 decision to be affiliated with the Ecumenical Patriarch in Turkey because it lacked subject matter jurisdiction. Instead, the trial court expressly stated that it declined jurisdiction only over William Turchyn's "spiritual suspension" claim because it "require[d] interpretation of ecclesiastical issues of religious governance... [which is] more properly a matter for church discipline." Appellants' claims as to the 1995 decision were dismissed for failure to state a claim under Ohio RICO.

In *Tibbs v. Kendrick* (1994), 93 Ohio App. 3d 35, 43, 637 N.E. 2d 397, this court set forth a two-step analysis to determine whether a court has subject matter jurisdiction to resolve a dispute between church members. First, the court must determine whether the church is a hierarchical or congregational church. Id. If the church is hierarchical, the court must decline jurisdiction. If the church is congregational, the court must determine whether the controversy involves ecclesiastical or secular issues. If the controversy is determined to be ecclesiastical, the court must decline jurisdiction. Id.

Here, regardless of whether St. Vladimir's is a hierarchical or congregational church, the propriety of suspending a parishioner's privilege to receive Holy Communion is purely an ecclesiastical issue. For example, in *Shariff v. Rahman,* 152 Ohio App. 3d 210, 2003-Ohio-1336, 787 N.E. 2d 72, this court affirmed the trial court's dismissal of mosque members' claims that they had been improperly excluded by the imam from participating in congregational prayer because the determination involved a review of ecclesiastical matters of the mosque. Because William Turchyn's "spiritual suspension" necessarily involves ecclesiastical matters of St. Vladimir's, this court properly dismissed this claim for lack of subject matter jurisdiction. Appellants' second and third assignments of error are overruled.

For their fourth and final assignment of error, appellants contend that the trial court erred when it found that appellants failed to state a claim upon which relief can be granted under Ohio RICO.[2] Appellants' contention is without merit, even when reviewing appellants' allegations in the light most favorable to them.

To maintain a valid action under Ohio RICO, the following three threshold requirements must be met:

"(1) conduct of the defendant which involves the commission of two or more of specifically prohibited state or federal criminal offenses;

"(2) the prohibited criminal conduct of the defendant constitutes a pattern of corrupt activity; and

"(3) the defendant has participated in the affairs of an enterprise or has acquired and maintained an interest in or control of an enterprise." *Universal Coach, Inc. v. New York City Transit Auth.* (1993), 90 Ohio App. 3d 284, 291, 629 N.E. 2d 28.

First, appellants failed to allege that appellees' conduct involved the commission of two or more of the specifically prohibited state or federal criminal offenses and that such conduct constituted a pattern of corrupt activity. The decision of the diocese and St. Vladimir's to be affiliated with the Ecumenical Patriarch

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[2] Appellants also reassert here the argument raised in their second assignment of error. However, because this court has already addressed appellants' second assignment of error, the remaining issue raised by appellants relates to Ohio RICO.

in Turkey is not a designated crime under Ohio and federal criminal statutes constituting "corrupt activity." Likewise, the decision of the clergy of St. Vladimir's to place William Turchyn on "spiritual suspension" is also not a designated crime under Ohio and federal criminal statutes.

Although appellants allege that their pastor's salary constituted a misappropriation of corporate funds because the pastor used church letterhead to promote opinions and viewpoints contrary to those held by appellants, criminal misappropriation does not include an employee's receipt of salary. And although appellants allege that their pastor laundered money when he solicited and received $25,000 from St. Vladimir's for a charitable organization, appellants failed to further allege that the monies were collected for an unlawful activity or never given to the charity. Instead, appellants allege that when the pastor collected the money, he failed to disclose an "affiliation" with the Ecumenical Patriarch in Turkey. The failure to disclose this affiliation is not a designated crime under Ohio and federal criminal statutes constituting "corrupt activity."

Second, appellants failed to allege an enterprise. Because an enterprise may not be composed simply of a corporation and its officers or employees, appellants' allegation that the "enterprise" consisted of all appellees, who were employed by or associated with St. Vladimir's, does not suffice. *Patton v. Wilson,* Cuyahoga App. No. 82079, 2003-Ohio-3379, ¶20.

Because the failure of a plaintiff to plead any of the elements necessary to establish a violation under Ohio RICO results in a defective complaint which cannot withstand a motion to dismiss based upon a failure to state a claim upon which relief can be granted, appellants' "blanket allegations," without more, were properly dismissed by the trial court. See *Universal Coach,* 90 Ohio App. 3d at 291. Appellants' fourth assignment of error is overruled and the decision of the trial court granting appellees' joint motion to dismiss is affirmed.

Judgment affirmed.

It is ordered that appellees recover of appellants their costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

[S] _____

MICHAEL J CORRIGAN
ADMINISTRATIVE JUDGE

FRANK D. CELEBREZZE, JR., J., and
ANTHONY O. CALABRESE, JR., J., CONCUR.

ANNOUNCEMENT OF DECISION
PER APP R. 22(B), 22(D) AND 26(A)
RECEIVED
MAY 27 2004
GERALD E. PUERST
CLERK OF THE COURT OF APPEALS
BY _____ DEP.

N.B. This entry is an announcement of the court's decision. See App. R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R.22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App. R. 22(E). See, also, S. Ct. Prac. R. II, Section 2(A)(1).

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

WILLIAM TURCHYN ET AL., Plaintiff	Case No: CV-03-492675
	Judge: JOSEPH D RUSSO
REV. JOHN R. NAKONACHNY ET. AL., Defendant	

JOURNAL ENTRY

83 DISP.JUDGE—FINAL

PLAINTIFFS, FORMER PARISHIONERS OF ST. VLADIMIR'S UKRANIAN ORTHODOX CHURCH, BROUGHT THIS ACTION AGAINST VARIOUS INDIVIDUALS ASSOCIATED WITH THE CHURCH, COLLECTIVELY, "DEFENDANTS." PLAINTIFFS' COMPLAINT ALLEGES INTENTIONAL VIOLATIONS OF THEIR CIVIL, CONTRACTUAL, AND PROPERTY RIGHTS, AS WELL AS FRAUDULENT TERMINATION OF PLAINTIFF WILLIAM TURCHYN'S CHURCH MEMBERSHIP. MORE SPECIFICALLY, PLAINTIFFS ALLEGE THAT DEFENDANTS VIOLATED OHIO REV. CODE 2923.32(A)(1). DEFENDANTS JOINTLY MOVED TO DISMISS THE COMPLAINT AGAINST ALL DEFENDANTS PURSUANT TO CIV. R. 12(B)(1), (B)(2), (B)(5), (B)(6), AND 9(B) ON 5/5/03. PLAINTIFFS FILED NUMEROUS "SUPPLEMENTAL" BRIEFS IN OPPOSITION. UPON CONSIDERATION OF ALL PLEADINGS FILED IN THE WITHIN CASE, AND FOR THE FOLLOWING REASONS, THE COURT GRANTS DEFENDANTS' MOTION TO DISMISS.

UNDER OHIO CIVIL RICO, "NO PERSON EMPLOYED BY, OR ASSOCIATED WITH ANY ENTERPRISE SHALL CONDUCT OR PARTICIPATE IN, DIRECTLY OR INDIRECTLY, THE AFFAIRS OF THE ENTERPRISE THROUGH A PATTERN OF CORRUPT ACTIVITY." OHIO REV. CODE 2923.32(A)(1). TO STATE A VALID CLAIM UNDER RICO, PLAINTIFFS MUST PLEAD WITH PARTICULARITY: (1) CONDUCT OF DEFENDANTS WHICH INVOLVES THE COMMISSION OF TWO OR MORE OF SPECIFICALLY PROHIBITED STATE OR FEDERAL CRIMINAL OFFENSES; (2) THE PROHIBITED CRIMINAL CONDUCT OF THE DEFENDANTS CONSTITUTE A PATTERN OF CORRUPT ACTIVITY; AND (3) THE DEFENDANTS HAVE PARTICIPATED

IN THE AFFAIRS OF AN ENTERPRISE OR HAS ACQUIRED AND MAINTAINED AN INTEREST IN OR CONTROL OF AN ENTERPRISE. UNIVERSAL COACH, INC., V. NEW YORK CITY TRANSIT AUTHORITY, 90 OHIO APP. 3D 284, 291. THE COURT FINDS THAT PLAINTIFFS' BLANKET ALLEGATIONS OF WRONGDOING ON THE PART OF CHURCH OFFICIALS AND PARISHIONERS DO NOT SATISFY THE UNIVERSAL TEST. ADDITIONALLY, PLAINTIFFS' ALLEGATIONS NEITHER MEET THE DEFINITION OF "CORRUPT ACTIVITY" AS DEFINED BY OHIO REV. CODE 2923.31(1), NOR DO THEY SUFFICIENTLY ESTABLISH THE EXISTENCE OF AN "ENTERPRISE" ACTING APART FROM THE PATTERN OF ACTIVITY IN WHICH IT ENGAGES. PATTON V. WILSON (JUN. 26, 2003), CUYAHOGA COUNTY APP. NO. 82079, 2003-WL-21473566. THE COURT ALSO NOTES THAT PLAINTIFFS' CLAIMS AS TO WILLIAM TURCHYN'S "SPIRITUAL SUSPENSION" REQUIRE INTERPRETATION OF ECCLESIASTICAL ISSUES OF RELIGIOUS GOVERNANCE AND THE COURT DECLINES TO EXERCISE JURISDICTION OVER INTERNAL PARISH PROCEDURE, FINDING IT MORE PROPERLY A MATTER FOR CHURCH DISCIPLINE. SHARIFF V. RAHMAN, (APR. 21, 2003), CUYAHOGA COUNTY APP. NO. 80745, 2003-OHIO-1354345. DEFENDANTS' MOTION TO DISMISS IS GRANTED FOR FAILURE TO STATE A CLAIM AND LACK OF SUBJECT MATTER JURISDICTION.
COURT COST ASSESSED TO THE PLAINTIFF(S).

[S] _____
Joseph Russo
09/03/2003

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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
CIVIL DIVISION

WILLIAM TURCHYN, 6357 Denison Blvd. Parma Hts., OH 44130 And MARIA TURCHYN 6357 Denison Blvd. Parma Hts., OH 44130 Plaintiffs vs. REV. JOHN R. NAKONACHNY 5913 State Road Parma, OH 44113 and GEOFREY GREENLEAF 7600 Thistle Lane Novelty, OH 44072 and GREENLEAF CAPITAL MGT. 20600 Chagrin Blvd. Shaker Hts., OH 44122	CASE NO. CV 03492675 JUDGE AMENDED COMPLAINT WITH JURY DEMAND WITH NEW PARTY DEFENDANTS

and)
)
HELEN GREENLEAF)
7600 Thistle Lane)
Novelty, OH 44072)
)
and)
)
FR. DEACON IHOR MAHLAY)
1893 West Royalton Road)
Broadview Hts., OH 44147)

and)
)
METROPOLITAN CONSTANTINE)
1803 Sidney Street)
Pittsburgh, PA 15203 08880)
)
and)
)
ARCHBISHOP ANTONY)
P.O. Box 495)
South Bound Brook, NJ 08880)
)
and)
)
REV. VOLODYMYR STELIAC)
15100 New Hampshire Ave.)
Silver Spring, MD 20905-5629)
)
and)
)
REV. DENNIS KRISTOF)
3060 Columbia Rd.)
Westlake, OH 44145)

and)
)
MICHAEL KOMINKO)
5320 Pine Ridge Oval)
Independence, OH 44131)
)
and)
)
STEVEN GREGORY PAWUK)
10789 State Road)
North Royalton, OH 44113)
)
and)
)
PAUL BURLIJ)
8171 Daventree Drive)
Brecksville, OH 44141)
)
and)
)
JACK BURSCU)
4735 Sunny Lane)
Brooklyn, OH 44144)
)
and)
)
LYDIA SHKURKO)
1640 State Road)
Hinckley, OH 44233)
)
and)
)
WASYL KOTELEWEC)
8572 Avery Road)
Broadview Hts., OH 44147)

and)
)
EUGENE BOYKO)
3051 Hetzel Drive)
Parma, OH 44134)
)
and)
)
MICHAEL DOBRONOS, SR.)
9305 Mercer Lane)
Brecksville, OH 44141)
)
and)
)
HANS HARASIMCHUK)
3013 Priscilla Ave.)
Parma, OH 44134)
)
and)
)
ALEX HUTNIK)
9860 Vista Drive)
N. Royalton, OH 44133)
)
and)
)
LUCY KOMICHAK)
4828 Canterbury Lane)
Broadview Hts., OH 44147)
)
and)
)
ROMAN MALYSZ)
487 Justo Lane)
Seven Hills, OH 44131)

and)
)
IWAN MICHAILUK)
10333 Valley Forge Dr.)
Parma Hts., OH 44130)
)
and)
)
WASYL PONOMARENKO)
5801 Vandalia Ave.)
Cleveland, OH 44144)
)
and)
)
OLGA SAMOCHA)
6899 Reid Dr.)
Parma, OH 44130)
)
and)
)
DEBORAH SIRKO-OSADSA)
6965 W. Fitzwater Rd.)
Brecksville, OH 44141)
)
and)
)
EUGENE WRUBEL)
3411 Somia Dr.)
Parma, OH 44134)
)
and)
)
JOHN DOES(S), NAMES UNKNOWN)
)
and)

JANE DOE(S), NAMES UNKNOWN)
)
Defendants)
)
)
DR. ANATOLIJ LYSYJ)
4004 Roanoke Circle)
Golden Valley, Minnesota 55422)
)
and)
)
REV. FRANK ESTOCIN)
P.O. Box 495)
South Bound Brook, NJ 08880)
)
and)
)
MICHAEL HERETZ)
95 Orient Way, #5 B-C)
Rutherford, NJ 07070)
)
New Party Defendants)
)
)
)
)

1. Now comes plaintiff, William Turchyn, and states that he was a member in good standing of St. Vladimir's Ukrainian Orthodox Cathedral (hereinafter referred to as "St. Vladimir's") and of the Ukrainian Orthodox Church of the United States of America, Inc. (hereinafter referred to as the "UOC-USA Diocese") until his civil, contractual and property rights were intentionally violated and his membership was illegally and fraudulently terminated as hereinafter stated.

2. Now comes plaintiff, Maria Turchyn, and states that she was and is a member in good standing of St. Vladimir's and the UOC-USA Diocese, whose civil, contractual and property rights were intentionally threatened and remain under threat of injury.

3. Plaintiffs, William Turchyn and Maria Turchyn, state and allege that the pattern of corrupt activity claims of this suit are separate from common law claims arising from and intertwined with the same facts by which plaintiffs, William Turchyn and Maria Turchyn, allege to have suffered compensable harm caused by predicate acts sufficiently related to constitute a pattern and also violations of common law as hereinafter stated.

4. Plaintiffs, William Turchyn and Maria Turchyn, further state, allege and aver that beginning in 1994, the exact date being unknown, and continuing to the present date, the defendants as hereinafter stated, engaged in a "pattern of corrupt activity" as defined by ORC 2923.31 (I).

5. Plaintiffs, William Turchyn and Maria Turchyn, further state and allege that this case also arises out of violations of ORC 2923.32 (A) (1) and (A) (2) engaging in a pattern of corrupt activity, ORC 2923.01, conspiring to engage in a pattern of corrupt activity, and ORC 2923.03, complicity.

6. This action is being instituted within the time period provided for ORC 2305.09 following the discovery of fraud.

7. This action is being instituted within the definition of ORC 1.03 ("anything of value") provided for in ORC 2923.31 (F).

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Gerald E. Fuerst
Clerk of Courts
Cuyahoga County

8. Plaintiffs, William Turchyn and Maria Turchyn, allege injuries by violations of ORC 2923.32 (A) (1) and (A) (2) as hereinafter stated, bring action under ORC 2923.34 (B), and seek relief under ORC 2923.34 (C) (1) (2), E, F, G, J, K, L and M.

9. The "enterprise" as defined in ORC 2923.31 (C) is St. Vladimir's. The enterprise is a legal entity that has an on-going business separate and apart from the pattern of corrupt activity and conspiracy alleged herein. Each of the defendants was employed by or associated with St. Vladimir's.

10. The "persons" employed or associated with the enterprise as defined in ORC 2923.31 (G) are named individually in this suit also as defendants and are alleged to have committed two (2) or more incidents of corrupt activity within the definition of ORC 2923.31 (E) as hereinafter stated:

1. Rev. John R. Nakonachny, defendant.
2. Geofrey Greenleaf, defendant.
3. Greenleaf Capital Management, defendant.
4. Fr. Deacon Inor Mahlay, defendant.
5. Metropolitan Constantine, defendant.
6. Archbishop Antony, defendant.
7. Rev. Volodymyr Steliac. defendant.
8. Rev. Dennis Kristof, defendant.
9. Michael Kominko, defendant.
10. Lydia Shkurko, defendant.
11. Eugene Boyko, defendant.
12. Michael Dobronos, Sr., defendant.
13. Hans Harasimchuk, defendant.
14. Lucy Komichak, defendant.
15. Roman Malysz, defendant.
16. Olga Samocha, defendant.
17. Deborah Sirko-Osadsa, defendant.
18. Helen Greenleaf, defendant.
19. Dr. Anatolij Lysyj, defendant.
20. Rev. Frank Estocin, defendant.
21. Michael Heretz, defendant.

11. Co-conspirators not named as parties to this lawsuit, but whom plaintiffs, William and Maria Turchyn, believe have actively conspired to engage in the pattern of corrupt activity as "persons" defined in ORC 2923.31 (G) include the following John and Jane Does, not known by name:

1. Members of the Metropolitan Council, UOC-USA Diocese.
2. Members of the Consistory, UOC-USA Diocese.
3. Members of St. Vladimir's.
4. Members of the Ukrainian Orthodox Church of America (hereinafter referred to as the "UOCA").
5. Members of the UOC-USA Diocese.

12. Plaintiffs, William Turchyn and Maria Turchyn, reserve the right to amend their complaint when the identities of John and Jane Doe(s) become known through discovery and litigation.

13. Plaintiffs, William Turchyn and Maria Turchyn, state and allege that the conduct of defendants identified as "persons" hereinafter described as "fraud" or variation of "fraud", were (a) a representation or, where there was a duty to disclose, concealment of a fact, (b) which was material to the transaction at hand, (c) made falsely, with knowledge of its falsity, or with such utter disregard and recklessness as to whether it was true or false that knowledge may be inferred, (d) with the intent of misleading plaintiffs, William Turchyn and Maria Turchyn, into relying upon it, (e) caused plaintiffs, William Turchyn and Maria Turchyn to justifiably rely upon the representation or concealment and (f) resulted in injury proximately caused by the reliance to plaintiffs, William Turchyn and Maria Turchyn.

14. Plaintiffs, William Turchyn and Maria Turchyn, allege further that the hereinabove trust and reliance upon fraudulent conduct existed from January 1, 1995 until on or about August 3, 1999 when plaintiff, William Turchyn discovered and continued to discover a pattern of corrupt activity and violations of common law, including but not limited to fraud.

15. Plaintiffs allege that the defendants identified as "persons" often operated in secrecy when engaging in a pattern

of corrupt activity and conspiracy to engage in a pattern of corrupt activity. The scheme to defraud St. Vladimir's of property and assets and to injure plaintiffs, William Turchyn and Maria Turchyn, as hereinafter stated included the use of US Mail and telephones (18 USC section 1343 & 18 USC section 1341) as an essential part of furthering that scheme.

16. Plaintiffs, William Turchyn and Maria Turchyn, further state and allege that defendants identified as "persons", having intentionally devised or intending to devise any scheme to defraud plaintiffs and third parties of money or property, or for obtaining money or property by means of false or fraudulent pretenses, representations or promises, participated in the purpose of executing such schemes or artifices, or attempting to do so, placed in post offices or authorized depository for mail, matter to be knowingly caused to be delivered by US Mail according to the instructions of said defendants, in a pattern of corrupt activity.

17. Plaintiffs, William Turchyn and Maria Turchyn, further allege that the schemes and artifices to defraud plaintiffs and third parties of money or property via the US Mail were predicate acts in a pattern of corrupt activity.
The specific intent to deceive will be found in essential material misstatements and omissions of fact made with a reckless disregard of its truth as hereinafter stated or in discovery. Discovery will further isolate innocent mailings from deceptive mailing constituting a pattern of corrupt activity.

18. Plaintiffs, William Turchyn and Maria Turchyn, further state and allege that justifiable reliance was anticipated and calculated by defendant "persons" to deceive and defraud persons of ordinary prudence and comprehension of money and property. Plaintiffs, William Turchyn and Maria Turchyn, were deceived by the mailings of defendants identified as "persons" and injured as the proximate cause of defendant "persons'" actions.

19. Plaintiffs, William Turchyn and Maria Turchyn, further allege that the scheme or artifice to defraud plaintiffs of

money or property included a scheme or artifice to deprive plaintiffs of the intangible right of honest services as predicate acts in the pattern of corrupt activities.

20. Plaintiffs, William Turchyn and Maria Turchyn, allege that the same criteria that applied to US Mail also applied equally to defendant "persons" use of telephones in order to commit wire fraud. Additional evidence is discoverable.

21. This action is being instituted by plaintiffs, William Turchyn and Maria Turchyn, within the period of the statute of limitations for engaging in a pattern of corrupt activity and for the various torts that will be set forth with particularity upon discovery of the existence of such torts.

22. The purpose of the "enterprise" and the predicate acts of the "persons" involved includes (a) the dissemination of false and misleading information to the members of St. Vladimir's and participation in deceptive practices in order to conceal, protect and promote the pattern of corrupt activity; (b) to usurp the Articles of Incorporation and the Constitution and By Laws of St. Vladimir's as part of the pattern of corrupt activity; (c) to replace the congregational polity of St. Vladimir's with the imposition of a "hierarchical church" structure as part of the pattern of corrupt activity;
(d) to divert the intent of St. Vladimir's Founders from established purposes as part of the pattern of corrupt activity;
(e) to conceal, protect, and promote the pattern of corrupt activity that the property and assets of St. Vladimir's members are held "in trust" for the benefit of UOC-USA Diocesan hierarchs and, by extension, to the control, benefit, enjoyment, and possession of the Ecumenical Patriarchate/Church of Constantinople; and (f) the solicitation and receipt of funds from St. Vladimir's in a pattern of corrupt activity.

23. The pattern of corrupt activity, the scheme to defraud St. Vladimir's members, the purpose of the "enterprise", and the alleged reckless and egregious activity of the "persons" were the direct and proximate cause of plaintiffs, William Turchyn's and Maria Turchyn's, injuries.

24. Plaintiffs, William Turchyn and Maria Turchyn, further state, allege and aver that defendants, Geofrey Greenleaf,

Lydia Shkurko, Eugene Boyko, Michael Dobronos, Sr., Hans Harasimchuk, Lucy Komichak, Roman Malysz, Olga Samocha and Deborah Sirko-Osadsa, in addition to being named as "persons", were members of St. Vladimir's Board of Trustees in 1999.

25. Plaintiffs, William Turchyn and Maria Turchyn, further state, allege and aver that defendants, Steven Gregory Pawuk, Paul Burlij, Jack Burscu, Wasyl Kotelewec, Alex Hutnik, Iwan Michailuk, Wasyl Ponomarenko, and Eugene Wrubel, were members of the Board of Trustees in 1999.

26. Plaintiffs state that St. Vladimir's was organized on October 26, 1924. The first Board of Trustees was elected by majority vote of membership on November 9, 1924 and on July 9, 1925 St. Vladimir's was duly incorporated as a religious corporation in the State of Ohio.

27. Plaintiffs state that St. Vladimir's was organized and incorporated as an independent congregation adopting the Ukrainian Orthodox faith but not subject to the control of any ecclesiastical organization other than St. Vladimir's itself.

28. The intent of St. Vladimir's Founders was for property ownership rights without restraint to acquire, own, control, and use property for the sole benefit of parish members that was clearly and unambiguously titled to exclude any higher church authority.

29. Plaintiffs further allege that the intent of St. Vladimir's Founders was for independent decision making in all parish affairs by the application of democratic majority rule, free of any intervention from any higher church authority or "hierarchical" church structure practiced by other Orthodox jurisdictions or religious organizations.

30. Since October 26, 1924 all who have joined St. Vladimir's have done so with implied consent and submission to the intent and consideration of the Founders found in the Articles of Incorporation and in addition to the stipulations of St. Vladimir's Constitution and By Laws.

31. The Constitution and By Laws of St. Vladimir's is a contract between St. Vladimir's and members and among

members themselves.

32. St. Vladimir's Articles of Incorporation give no property rights to any higher church authority, national denomination, or ecclesiastical authority.

33. There is no provision, or even suggestion, in St. Vladimir's Articles of Incorporation for forfeiture or reversion of parish properties to any higher church authority in the event of a withdrawal by St. Vladimir's from higher church organization or UOC-USA Diocese.

34. St. Vladimir's is a distinct congregation, totally and strictly independent in polity from other parishes affiliated with the UOC-USA Diocese. Autonomy of each local congregation is the central principle of self-government of parishes spiritually affiliated with the UOC-USA Diocese.

35. The Founders of St. Vladimir's structured property ownership in the Articles of Incorporation and in the Constitution and By Laws so as to not require local courts to resolve ownership of parish property.

36. The Founders of St. Vladimir's chose to become Incorporated under a conscious decision which insured the control of their temporal affairs by the parishioners themselves and which protected their properties from alienation without their consent. Incorporation equaled not only the right to control the properties of St. Vladimir's but also to transmit property in perpetual succession. Parishioners of St. Vladimir's are trust beneficiaries of this succession.

37. Properties acquired by St. Vladimir's through the contributions and sacrifices of many members, past and present, who adhered to the intent of the Founders may not be diverted from the use it was originally dedicated to to another inconsistent or antagonistic use.

38. Control of St. Vladimir's property has always been exercised by the parishioners of St. Vladimir's without interference from any higher church authority. No evidence exists in the history of St. Vladimir' that any higher church authority contributed anything to the acquisition of property. Higher church authority was not mentioned in any property discussions or in any documents effectuating those transactions

at St. Vladimir's, and deeds to property owned by St. Vladimir's make no mention of any higher church authority.

39. The intent of St. Vladimir's Founders to be independent of any higher church authority in polity was the policy that motivated the Founders and their successors for the acquisition of real estate and other property.

40. St. Vladimir's holds title to all property and assets free of any competing interest. As such, St. Vladimir's has the right to determine the use of property with neither ecclesiastic nor administrative law of any higher church organization relevant or valid to the polity of St. Vladimir's.

41. At no time was any communication ever directed to St. Vladimir's that higher church organization or ecclesiastic authority claimed ownership or of any trust interest in St. Vladimir's properties and at no time did St. Vladimir's make a commitment, agreement, or intention in writing or otherwise that titles to its properties would be held in trust for higher church organization, ecclesiastic authority, or any division thereof.

42. The members of St. Vladimir's and the Board of Trustees are empowered to construct legal instruments and to enter into contracts, and enforce the same, which include for extensive renovation and repairs of the church and other properties without the participation, intervention, or confirmation of any higher church authority.

43. St. Vladimir's never abandoned independence or sovereignty in order to become a subordinate member of any higher church authority and has a spiritual relationship with the UOC-USA Diocese that is not compulsory, but rather voluntary, with the right to withdraw parish participation by its own decision at any time. By way of example, but not limitation, the Board of Trustees of St. Vladimir's voted to withdraw St. Vladimir's from affiliation with the UOC-USA Diocese in 1971.

44. St. Vladimir's has never ratified or accepted the governing authority of the UOC-USA Diocese Constitution.

45. Members of St. Vladimir's are the chief decision makers of all major issues. Issues have always been decided on a purely democratic basis, by majority vote, at a meeting that follows adequate notice and established procedures.

46. When a majority of members decides a question at St. Vladimir's, the entire body of the parish is bound thereby, whether present or not. Likewise, the decision can be revoked.

47. From the determination of a question by the majority of the congregation or by the Board of Trustees when applicable, there is absolutely no appeal to any ecclesiastical authority.

48. Election of Trustees are strictly subject to the Constitution and By Laws of St. Vladimir's without the participation, intervention, or confirmation of any higher church authority in order to make the election effective.

49. Minutes of all parish meetings are confirmed only by the members of St. Vladimir's, or the Board of Trustees when applicable, in order to be effective.

50. The decisions and resolutions made by the Board of Trustees or at parish meetings do not demand approval by any higher church authority before they are binding on the members of St. Vladimir's.

51. All decisions dealing with parish membership, such as termination, have been historically within the authority of the Board of Trustees.

52. St. Vladimir's has never accepted any penal code from any higher church authority. Discipline of members is a matter of internal polity to St. Vladimir's.

53. All funds are held in trust for the benefit of St. Vladimir members and the corporation alone has access to these funds as provided by the Constitution and By Laws.

54. The members of St. Vladimir's have the right to change the Articles of Incorporation or the Constitution and By Laws without the intervention, participation, or confirmation of any higher church authority in order for the changes to be effective.

55. Following World War I, a Ukrainian national identity re-emerged. The Autocephalous Ukrainian Orthodox

Church was reborn and re-established in 1921 in Kyiv, the capital city of Ukraine, as the spiritual center and Mother Church of all Ukrainian Orthodox Christians (hereinafter referred to as "UOC-Ukraine). It was the intent of St. Vladimir's Founders to be in perpetual spiritual communion with the Mother Church, UOC-Ukraine.

56. In 1924, UOC-Ukraine sent Bishop Ioan (John) Teodorivych to the United States to unite the Ukrainian Orthodox parishes into a Diocese of UOC-Ukraine, thus creating the Autocephalous UOC-USA Diocese.

57. Autocephaly is defined as the complete and total independence of the UOC-USA Diocese from any foreign, non-Ukrainian control and/or the influence of other Orthodox jurisdictions, national churches, or their intermediaries in all matters of life and government.

58. In addition to embracing Autocephaly and spiritual communion with the Mother Church, UOC-Ukraine, the Founders of St. Vladimir's also embraced Sobornopravnist. Sobornopravnist is the unique congregational polity of individual parishes spiritually affiliated with the UOC-USA Diocese whereby the parishes retain the sovereign right to control all matters pertaining to the management of their own parishes, including all occupational, administrative, and financial matters, including but not limited to, employing and terminating the services of parish clergy, the control of parish income, expenses, investments, the sale and disposition and/or maintenance of all property (real and personal) and assets (fixed or other).

59. Sobornopravnist also means government of the UOC-USA Diocese by a Sobor. A Sobor is a church council that includes both clergy and laity delegates from each parish with decision making, voting authority.

60. Delegates elected by member of St. Vladimir's as parish fiduciaries to vote on pre-designated matters at Sobors do so only upon the advice and consent of parish members. Delegates provide post-Sobor reports to the Board of Trustees and to the parishioners of St. Vladimir's.

61. Tri-annual Sobors were conducted in 1995, 1998 and 2001 and St. Vladimir's was represented at each Sobor with

two delegates.

62. The uniqueness of Sobornopravnist, in practice, means that the hierarchs of the UOC-USA Diocese have traditionally dealt with issues of dogma, belief, and ritual while the temporal non-religious areas of church life are dealt with by the laity.

63. The uniqueness of Sobornopravnist government is very distinct from the Synodal/hierarchical polity found in other Orthodox Churches where local parish properties are held in trust for the benefit of hierarchical church authority (i.e. Bishops) and hierarchical church authority can overrule, alter, or annul local parish decisions.

64. Plaintiffs, William Turchyn and Maria Turchyn, further state and allege that with the uniqueness of Sobornopravnist, St. Vladimir's retains the right to withhold parish assessments to the UOC-USA Diocese when not in agreement with the decisions of the UOC-USA Diocese that intrude upon the independent, congregational polity of St. Vladimir's.

65. Assessments are voluntary payments made in recognition of the UOC-USA Diocese's assistance in securing priests acceptable to St. Vladimir's, promoting the Autocephalous Ukrainian Orthodox Church, promoting Sobornopravnist and perpetuating the Ukrainian national identity, heritage, history and culture.

66. The spiritual affiliation of St. Vladimir's with the UOC-USA Diocese has always been honored. Visits of UOC-USA Diocesan hierarchs, by way of example but not limitation, for holy day services and construction blessings, have been compensated for by St. Vladimir's with "Gifts of Love", reimbursed travel expenses or special collections approved of by the Board of Trustees.

67. The creation of the UOC-USA Diocesan Center in South Bound Brook, New Jersey was made possible in part with the loans and other financial support of St. Vladimir's.

68. The Diocesan Center in South Bound Brook, New Jersey is held "in trust" for the benefit of parishes spiritually

affiliated with the UOC-USA Diocese, which includes St. Vladimir's.

69. The uniqueness of how UOC-Ukraine and the UOC-USA Diocese were organized and governed via Sobornopravnist are reasons why UOC-Ukraine and the UOC-USA Diocese were not "in spiritual communion" with other Orthodox Churches and not "recognized" by them as equals.

70. Plaintiffs, William Turchyn and Maria Turchyn, further state and allege that the principle of Ethnicity that is the promotion and preservation of the Ukrainian culture, language and national identity was always a basic characteristic of the congregational church of St. Vladimir's.

71. Plaintiffs, William Turchyn and Maria Turchyn, further state that the temporal principles of Soborprovnist and Ethnicity are secular features and not matters of faith and religious dogma.

72. In the 1930s negotiations took place between the UOC-USA Diocese and the Ecumenical Patriarchate/Church of Constantinople to gain "recognition" for the UOC-USA Diocese and to unite factions of the Ukrainian Orthodox Church in the United States.

73. These negotiations failed because the UOC-USA Diocese would not accept submission to the jurisdiction of the Ecumenical Patriarchate/Church of Constantinople.

74. At the 1936 Sobor, the UOC-USA Diocese reasserted that even though UOC-Ukraine had been liquidated by the Soviet Government, the UOC-USA Diocese still viewed itself as part of the Mother Church in Kyiv, Ukraine as a Church in exile.

75. Despite the opportunity to join the Ecumenical Patriarchate/Church of Constantinople, as some Ukrainian Orthodox parishes had decided, the Founders of St. Vladimir's remained in spiritual communion with the Mother Church via the UOC-USA Diocese.

76. With the upheaval in the Soviet Union, the UOC-Ukraine was reborn yet again in Kyiv, Ukraine in 1990,

and elected as its head, or Patriarch, Metropolitan Mystyslav who was at that time the head of the UOC-USA Diocese.

77. Plaintiff, William Turchyn, states that following the death of Patriarch Mystyslav, his legal successor was Patriarch Volodymyr and following his death, the legal and current successor is Patriarch Filaret. Defendant, Antony, sought the position of Patriarch but was unsuccessful.

78. Plaintiffs, William Turchyn and Maria Turchyn, state that defendant, Constantine, is the senior bishop and head of the UOC-USA Diocese.

79. Plaintiffs, William Turchyn and Maria Turchyn, further state that defendant, Antony, is a bishop of the UOC-USA Diocese.

80. Plaintiffs, William Turchyn and Maria Turchyn, further state and allege that the Metropolitan Council is the administrative body within the UOC-USA Diocese whose members have the duty, as trustees, to oversee the administration of the UOC-USA Diocese.

81. Plaintiffs, William Turchyn and Maria Turchyn, further state that at all relevant times, defendants, Constantine, Antony, Nakonachny, Estocin and Lysyj, were members of the Metropolitan Council.

82. Plaintiffs, William Turchyn and Maria Turchyn, further state and allege that the Consistory is the executive organ of the UOC-USA Diocese and is charged with the day to day administrative duties of the UOC-USA Diocese.

83. Plaintiffs, William Turchyn and Maria Turchyn, state and allege that defendants, Constantine, Antony and Nakonachny, were members of the Consistory at all relevant times.

84. Plaintiffs, William Turchyn and Maria Turchyn, state and allege that in 1994 defendants, Constantine and Antony, traveled to Istanbul, Turkey, which resulted in a secret "Points of Agreement" dated December 6, 1994 with the Ecumenical Patriarchate/Church of Constantinople without the pre-approval of parishes, including St. Vladimir's, affiliated with the UOC-USA Diocese.

85. Plaintiffs, William Turchyn and Maria Turchyn, state and allege that in aligning themselves with the Ecumenical

Patriarchate/Church of Constantinople, defendants, Constantine and Antony, not only abandoned the UOC-USA jurisdiction, but also broke the spiritual communion with the Mother Church in Kyiv, Ukraine, the principle of Autocephaly, the principle of Sobornopravnist, breached their fiduciary duties as members of the Metropolitan Council and betrayed 70 years of existence in the United States of the UOC-USA Diocese.

86. Plaintiffs, William Turchyn and Maria Turchyn, further state and allege that on or about March 12, 1995, defendants, Constantine, Antony, Nakonachny, Estocin, Lysyj and others yet to be identified, willfully, intentionally and knowingly finalized their abandonment of the UOC-USA Diocese and St. Vladimir's for the jurisdiction of the Ecumenical Patriarchate/Church of Constantinople and deceitfully concealed their individual actions from the members of the UOC-USA Diocese and St. Vladimir's in order to protect the pattern of corrupt activity which followed the abandonment.

87. Plaintiffs, William Turchyn and Maria Turchyn, state and allege that the external act by which the abandonment was carried into effect and the intention of not reclaiming any rights or interest in the UOC-US Diocese and St. Vladimir's by the concealment of the abandonment by defendants, Constantine, Antony, Nakonachny, Estocin, Lysyj and others yet to be discovered and identified, was a voluntary relinquishment of all rights, privileges and employment in the abandoned UOC-USA Diocese and St. Vladimir's.

88. Plaintiff, William Turchyn, states and alleges that at least one additional secret agreement, Protocol No. 937, resulted from the abandonment act of March 12, 1995 between defendants, Constantine, Antony, Nakonachny, Estocin, Lysij and others yet to be discovered and identified, and the Ecumenical Patriarchate/Church of Constantinople.

89. Plaintiff, William Turchyn, alleges that Protocol No. 937 is further evidence of abandonment whereby defendants, Constantine, Antony, Nakonachny, Estocin, Lysyj and others yet to be discovered and identified, were required by the Ecumenical Patriarchate/Church of Constantinople "to formally declare that they would not seek the autocephaly of the Ukrainian Church".

90. Plaintiff, William Turchyn, further alleges that he attempted to investigate the consequences of Protocol No. 937 by (a) writing to defendants, Constantine and Antony, in May 1998 with no reply; (b) writing to defendant, Nakonachny, on June 12, 1998 with no reply, (c) requesting an in-person clarification from defendant Constantine, on April 3, 1999 with a misleading response, and (d) notifying the Board of Trustees of St. Vladimir's on September 12, 1999 with no reply.

91. Plaintiffs, William Turchyn and Maria Turchyn, further state and allege that in their new positions as bishops of the Ecumenical Patriarchate/Church of Constantinople, defendant, Constantine took the title "Metropolitan Constantine of Eirinoupolis" and defendant, Antony, took the title of "Archbishop Antonios of Ieropolis". The new titles were also deceitfully concealed from the members of UOC-USA Diocese and the members of St. Vladimir's in order to protect the pattern of corrupt activity which followed the abandonment.

92. Plaintiffs, William Turchyn and Maria Turchyn, state and allege further that the fraudulent misrepresentations, subterfuge and trickery in describing events prior to and after March 12, 1995 by defendants, Constantine, Antony, Nakonachny, Estocin, Lysyj and others yet to be identified, was the cornerstone of the pattern of corrupt activity that has continued to date.

93. Plaintiffs, William Turchyn and Maria Turchyn, state and allege that, by way of example but not limitation, the fraudulent misrepresentations included declarations by defendants, Constantine, Antony, Nakonachny, Estocin and Lysyj, that the "recognition" of the UOC-USA Diocese by the Ecumenical Patriarchate/Church of Constantinople was accomplished without infringing upon the unique identity, constitution, integrity, structure or administration of the UOC-USA Diocese.

94. Plaintiffs, William Turchyn and Maria Turchyn, state and allege that, by way of example but not limitation, the fraudulent misrepresentations included declarations by defendants, Constantine, Antony, Nakonachny, Estocin and Lysyj, that the "recognition" of the UOC-USA Diocese would positively effect the unity of the UOC-Ukraine and strengthen

the position of Kyiv as the spiritual Mother Church of all Orthodox Ukrainians in Ukraine and in the disapora.

95. Plaintiffs, William Turchyn and Maria Turchyn, state and allege that, by way of example but not limitation, the fraudulent misrepresentations included declarations by defendants, Constantine, Antony and Nakonachny, that the Ecumenical Patriarchate/Church of Constantinople had no rights to church properties as a result of the "recognition".

96. Plaintiff, William Turchyn, states and alleges that the pattern of corrupt activity as defined by ORC 2923.32 (A) (1) and the scheme to defraud St. Vladimir's members of property and assets, as defined in ORC 2923.32 (A) (2), the conspiracy to defraud, as defined by ORC 2923.01, and complicity, as defined by ORC 2923.03 began on March 12, 1995 by defendants, Constantine, Antony, Nakonachny, Estocin, Lysij, and others yet to be discovered and identified, when each of them abandoned the UOC-USA Diocese and St. Vladimir's for the Ecumenical Patriarchate/Church of Constantinople then concealed and fraudulently misrepresented the facts.

97. Plaintiff, William Turchyn further alleges that defendant, Estocin, admitted the abandonment on or about June 11/24, 1997 to all the members of the Metropolitan Council which included defendant, Mahlay.

98. Plaintiff, William Turchyn, further states and alleges that as of the date of the said Estocin letter, defendant, Mahlay, became a willing participant in a pattern of corrupt activity, scheme to defraud St. Vladimir's members of property and assets, and conspiracy via ORC 2923.32 (A) (1), (A) (2), ORC 2923.01 and ORC 2923.03 with defendants, Constantine, Antony Nakonachny, Estocin, Lysyj and others yet to be discovered and identified.

99. Plaintiff, William Turchyn, further alleges that defendants, H. Greenleaf and Heretz, were members of the Metropolitan Council in 1999.

100. Plaintiff, William Turchyn, states and alleges that defendants, H. Greenleaf and Heretz, participated in approved

activities of the Metropolitan Council to "eradicate the concept of congregationalism" and the fraudulent declaration that the UOC-USA Diocese was a "hierarchical church" which was expressed in the Consistory newsletter of August, 1999.

101. Plaintiff, William Turchyn, states that defendants, H. Greenleaf and Heretz, knew and participated in litigation, UOC-USA v. Holy Ascension, whereby the UOC-USA Diocese was claiming a fraudulent "in trust" relationship with parish properties, including St. Vladimir's, regardless of any parish By Laws to the contrary.

102. Plaintiff, William Turchyn further states that defendants, H. Greenleaf and Heretz, became willing participants in a pattern of corrupt activity, scheme to defraud St. Vladimir's members of property and assets, and conspiracy via ORC 2923.32 (A)(1) and (A)(2), ORC 2923.01 and ORC 2923.03 with defendants, Constantine, Antony, Nakonachny, Estocin, Lysyj, Mahlay, and others yet to be discovered and identified.

103. Plaintiffs, William Turchyn and Maria Turchyn, state and allege that as the direct and proximate cause of defendant's conduct, hereinabove stated, plaintiffs, William Turchyn and Maria Turchyn, have been injured, harmed and damaged.

104. Plaintiffs, William Turchyn and Maria Turchyn, further state, allege and aver that defendant, Nakonachny, is the pastor of St. Vladimir's located at 5913 State Road, Parma, Ohio 44134-2864 and as such is charged with the responsibility of and duty as defined by the Constitution and By Laws of St. Vladimir's of providing for the spiritual well being of the members of said church.

105. St. Vladimir's employment contract with defendant, Nakonachny, was one for employment at will such that the members of St. Vladimir's by majority vote, or the Board of Trustees by majority vote, could have terminated defendant, Nakonachny's, contract without cause, and St. Vladimir's and its officers could not have breached the contract of employment solely by discharging defendant, Nakonachny, against his will.

106. At all relevant times, defendant, Nakonachny, was not beyond the control of St. Vladimir's.

107. Plaintiffs, William Turchyn and Maria Turchyn, state further that defendants, Nakonachny, Constantine, Antony, and Steliac, did not have, or ever had membership rights at St. Vladimir's.

108. Plaintiffs, William Turchyn and Maria Turchyn, state further that defendant, Steliac, was the assistant pastor of St. Vladimir's in 1998, 1999 and 2000.

109. Plaintiffs, William Turchyn and Maria Turchyn, state and allege that the same conditions of employment hereinabove described for defendant, Nakonachny, applied equally to defendant, Steliac.

110. Plaintiff, William Turchyn, states that he was a duly elected member of the Board of Trustees of St. Vladimir's in 1999 and he was also elected to serve as English Recording Secretary of said Board of Trustees.

111. Plaintiff, William Turchyn, further states and alleges that within the said Constitution and By Laws of said corporation there is a specific article: Article 17.1 (Marked Exhibits A1 & A1a and attached hereto) states: The Property of this corporation, real or personal, shall always belong to the congregation and shall be managed by the Board of Trustees, elected as stated in Article 6.1 (Marked Exhibit A2 & A2a and attached hereto) of this constitution and shall under no circumstances be sold, transferred or conveyed to any bishop, diocese, person or corporation of any other religious organization without the unanimous consent of all paid-up members of the congregation, except where such sale is for the purpose of acquiring another church building or property for said corporation.

112. Plaintiffs, William Turchyn and Maria Turchyn, state and allege that all defendants knew or should have known the validity of the hereinabove Articles 17.1 and 6.1.

113. Plaintiffs, William Turchyn and Maria Turchyn, further state and allege that defendant, Nakonachny, in a clandestine manner beginning in 1995 planned to subvert the Constitution and By Laws of St. Vladimir's and fraudulently kept his activities secret.

114. Plaintiffs, William Turchyn and Maria Turchyn, state and allege that defendant, Nakonachny, at all times

relevant, fraudulently misrepresented to the members of St. Vladimir's that their properties and assets were not in jeopardy.

115. Plaintiffs, William Turchyn and Maria Turchyn, further state and allege that defendants, Antony and Constantine, fraudulently misrepresented the intention of the UOC-USA Diocese to claim parish properties, including St. Vladimir's.

116. Plaintiffs, William Turchyn and Maria Turchyn, further state and allege that defendant, Nakonachny, clandestinely used parish letterhead stationary without the advice, knowledge or consent of the Board of Trustees and/or the members of St. Vladimir's to promote opinions and viewpoints detrimental to St. Vladimir's Sobornopravnist.

117. Plaintiffs, William Turchyn and Maria Turchyn, state and allege that as the direct and proximate cause of defendant's conduct, hereinabove stated, plaintiffs, William Turchyn and Maria Turchyn, have been injured, harmed and damaged.

118. Plaintiffs, William Turchyn and Maria Turchyn, further state and allege that defendant, Nakonachny's, clandestine use of St. Vladimir's property as a priest united with the Ecumenical Patriarchate/Church of Constantinople constitutes a diversion of property from the intent of St. Vladimir's Founders. The compensation and benefits received by defendant, Nakonachny, during this deliberately concealed trespass constitutes unjust enrichment via the misappropriation of corporate funds under ORC 1333.63.

119. Plaintiffs, William Turchyn and Maria Turchyn, further state and allege that defendant, Nakonachny, in violation of ORC 2923.32 (A)(1), denied to the members of St. Vladimir's that spiritual communion with the Mother Church in Kyiv, Ukraine was broken Defendants, Steliac and Mahlay, remaining silent when there was a duty to speak, aided and abetted defendant, Nakonachny, in violation of ORC 2903.01 and 2923.03.

120. Plaintiff, William Turchyn, states and alleges that when he asked defendant, Nakonachny, in his capacity as

Brotherhood President and in front of the assembled Brotherhood, "On or about March 12, 1995, did you and the hierarchs of the UOC-USA Diocese voluntarily become priests and hierarchs of the Church of Constantinople?", defendant, Nakonachny, replied "No." This reply by defendant, Nakonachny, was knowingly, intentionally and willfully false in a pattern of corrupt activity.

121. Plaintiff, William Turchyn, further states and alleges that defendant, Nakonachny, in a legal proceeding on or about November 27, 2001 admitted to being in "spiritual communion" with the Ecumenical Patriarchate/Church of Constantinople.

122. Plaintiffs, William Turchyn and Maria Turchyn, further state and allege that defendant, Nakonachny, knew or should have known that his acts were continuing fraudulent activities, were a breach of his Diocesan fiduciary duties and obligation to the congregation of St. Vladimir's and were intended to harm plaintiffs, William Turchyn and Maria Turchyn, and the members of St. Vladimir's congregation.

123. Plaintiff, William Turchyn was mandated by Board of Trustees President Pawuk to investigate the details of a lawsuit initiated by defendant, Antony, on behalf of parishes affiliated with the UOC-USA Diocese against Holy Ascension parish in Clifton, New Jersey.

124. Holy Ascension alleges that defendant, Antony, claimed their properties and assets as held "in trust" for the benefit of defendants, Constantine and Antony, and that the UOC-USA Diocese was a "hierarchical church". Such reckless claims by defendant, Antony, contradict Sobornopravnist in a pattern of corrupt activity in violation of ORC 2923.32 (A)(1) and (A)(2).

125. Plaintiff, William Turchyn further states, alleges and avers that defendant, Nakonachny, realized that plaintiff, William Turchyn, was seeking correct information regarding activities by defendants, Constantine, Antony and Nakonachny, whereby defendant, Nakonachny, deliberately raised fraudulent issues and/or made fraudulent misrepresentation of facts regarding plaintiff, William Turchyn, that was a continuing and

ongoing pattern of corrupt activities in order to discredit plaintiff, William Turchyn and his investigation.

126. Plaintiff, William Turchyn, states and alleges that defendant, Nakonachny, wrote a letter dated August 3, 1999 to St. Vladimir's Board of Trustees with the knowledge and approval of defendants, Constantine, Steliac and Mahlay.

127. Plaintiff, William Turchyn, states further that said letter of August 3, 1999 by defendant, Nakonachny, was written to obtain the valuable benefit of stopping plaintiff, William Turchyn's, investigation of the UOC-USA Diocese v. Holy Ascension litigation.

128. Plaintiff, William Truchyn, states and alleges that the UOC-USA Diocese had made an "in trust" legal claim to all parish properties and assets on or about June 9, 1999 which defendant, Nakonachny, supported with the fraudulent claim in said letter of August 3, 1999 that (St. Vladimir's) "WE ARE NOT A CONGREGATIONAL PARISH".

129. Plaintiff, William Turchyn, states that defendants, Nakonachny, Constantine, Steliac and Mahlay, colluded to violate ORC 2923.32 (A)(1) and (A)(2). ORC 2923.01 (conspiracy), ORC 2923.03 (complicity), ORC 2905.11 (extortion), and ORC 2905.03 (unlawful restraint).

130. Plaintiff, William Turchyn, states and alleges, by way of example but not limitation, that his efforts to set the Corporation into motion to protect the rights of plaintiff, William Turchyn, St. Vladimir's and St. Vladimir's members via the Board of Trustees were not successful.

131. Plaintiff, William Turchyn, further states and alleges that when he, acting in his capacity as member of the board of trustees, reported to the board of trustees on September 12, 1991 on the information he had compiled of corruption in the Metropolitan Council and at St. Vladimir's, the Board of Trustees did not heed the warnings in violation of their fiduciary duties.

132. Plaintiff further states, alleges and avers that defendant, Nakonachny, in violation of his duties and obligations

imposed upon him by the Constitution and By Laws of the St. Vladimir's Charter, continued to fraudulently misrepresent the congregational polity of St. Vladimir's and interfered with the rights of plaintiff, William Turchyn, to serve as fiduciary, engaged in activity to the detriment of plaintiffs, William Turchyn and Maria Turchyn, and additionally all members of said religious church and congregation. These negligent and fraudulent acts and/or omissions were a violation of his duties as pastor of the congregation and a breach of said By Laws of said corporation and constitute a breach of his contractual pastoral duty to members of the congregation of St. Vladimir's.

133. Plaintiff, William Turchyn, further states and alleges that defendant, Nakonachny, and subsequently, other defendants, set about in a clandestine way to harm and injure plaintiff, William Turchyn, by fraud, deceit and deception, his credibility and his relationship with the St. Vladimir's congregation as part of the pattern of corrupt activity.

134. Plaintiffs, William Turchyn and Maria Turchyn, state and allege that as the direct and proximate cause of defendant's conduct, hereinabove stated, plaintiffs, William Turchyn and Maria Turchyn, have been injured, harmed and damaged.

135. Plaintiff, William Turchyn, further states and alleges that this tortious conduct by defendant, Nakonachny, that was aided and abetted by other defendants was done to deliberately ridicule, embarrass, intimidate and in other ways, to cause harm and emotional distress to plaintiff, William Turchyn.

136. Plaintiff, William Turchyn, further states and alleges that defendant, Nakonachny, knew or should have known that his actions were contrary to rules and regulations of the Constitution and By Laws of St. Vladimir's and that the fraudulent deception used against plaintiff, William Turchyn, were intended to harm him and subsequently caused intentional emotional harm to plaintiff, William Turchyn.

137. Plaintiff, William Turchyn, further states, alleges and avers that on or about November 26, 1999 defendant, Nakonachny, and in collusion with defendant, Constantine, published a letter concerning plaintiff, William Turchyn, which

was recklessly false, written with fraudulent intent and defamatory and which is being republished as late as January 24, 2003 on website http://www.saveourvoc.com/. (See exhibit B1, B2, B3, C1).

138. Plaintiff, William Turchyn, states and alleges that defendant, Nakonachny's, letter of November 26, 1999 was the product of fraud and collusion in conjunction with defendant, Constantine, and continued the pattern of corrupt activity. Defendants, Constantine and Nakonachny, had illegally placed plaintiff, William Turchyn, "on Epitimia, a form of spiritual suspension which surrenders your privilege to receive the Mystery of Holy Communion". In fact, plaintiff, William Turchyn, was not suspended, but excommunicated without cause or due process from the membership of St. Vladimir's and the UOC-USA Diocese.

139. Plaintiff, William Turchyn, states and alleges that the suspension by defendants, Constantine and Nakonachny, violated ORC 2923.32 (A)(1) and (A)(2), ORC 2905.22 (extortion), ORC 2923.01 (conspiracy), ORC 2923.03 (complicity), ORC 2905.05 (unlawful restraint) and ORC 2913.05 (telecommunications fraud) in addition to violating plaintiff, William Turchyn's, first amendment right to freedom of worship.

140. Plaintiff, William Turchyn, states and alleges that the suspension was a continuing pattern of corrupt activity, resulting in the loss to worship freely in familiar surroundings that created a serious emotional deprivation for plaintiff, William Turchyn. Defendants, Constantine and Nakonachny, possessed sufficient knowledge to realize that certain and inevitable injury would occur to plaintiff, William Turchyn, as a result of defendants, Nakonachny's and Constantine's, reckless and wrongful conduct and actions.

141. Plaintiff, William Turchyn, states further that defendants, Constantine and Nakonachny, with the unscrupulous suspension, caused plaintiff, William Turchyn, deep suffering and profound humiliation, hurt to personality, injury to character, reputation, feelings and personal rights and human dignity and malicious injury to his good name via 2923.31 (F) in

a pattern of corrupt activity.

142. Plaintiff, William Turchyn, states and alleges that neither defendants, Constantine nor Nakonachny, had valid or legal authority to suspend, William Turchyn, in a congregational parish, but did so in a pattern of corrupt activity.

143. Plaintiffs, William Turchyn and Maria Turchyn, state and allege that as the direct and proximate cause of defendant's conduct, hereinabove stated, plaintiffs, William Turchyn and Maria Turchyn, have been injured, harmed and damaged.

144. Plaintiff, William Turchyn, states that membership in a Board of Trustees is a civil right that defendants, Constantine and Nakonachny, violated via William Turchyn's suspension in a pattern of corrupt activity.

145. Plaintiff, William Turchyn, states and alleges that property rights cannot be taken away or interfered within a congregational parish without due process. Defendants, Constantine and Nakonachny, conspired to deprive plaintiff, William Turchyn, of his property rights at St. Vladimir's in a pattern of corrupt activity.

146. Plaintiff, William Turchyn, states and alleges that defendants, Constantine and Nakonachny, conspired to libel and slander plaintiff, William Turchyn.

147. Plaintiff, William Turchyn, further states that he commenced to seek clarification of this defamatory letter and its underpinnings in order to resolve this wrongful act, however his efforts via the Board of Trustees, by way of example but not limitation, on December 14, 1999 were unsuccessful.

148. Plaintiff, William Turchyn, states and alleges, by way of example but not limitation, that his efforts to set the Corporation into motion to protect the rights of plaintiff, William Turchyn, St. Vladimir's and St. Vladimir's members via the Board of Trustees were not successful on December 14, 1999.

149. Plaintiff, William Turchyn, further states, alleges and avers said publication by defendants, Nakonachny and Constantine, was malicious and was recklessly intended to injure plaintiff, William Turchyn's, standing in the St. Vladimir

congregation, Board of Trustees, and the Ukrainian Community, and plaintiff, Williams Turchyn's, standing as President of the Brotherhood organization of St. Vladimir's and was intended by defendants, Nakonachny and Constantine, to cause plaintiff intentional infliction of mental distress.

150. Plaintiff, William Turchyn, states and alleges that defendants, Constantine and Nakonachny, had abandoned the UOC-USA Diocese that they pretended to serve and concealed that fact when plaintiff, William Turchyn, was suspended. This was reckless, outrageous and unconscionable conduct that went far beyond all bounds of decency, atrocious and utterly intolerable in a civilized community in addition to a pattern of corrupt activity.

151. Plaintiff, William Turchyn, states further that defendants, Constantine and Nakonachny, had abandoned the UOC-USA diocese and concealed that fact when plaintiff, William Turchyn, was suspended. Such reckless conduct constitutes secular behavior that is so non-religious in nature that no church or church figure can possibly claim that such an act is accepted practice in any religious organization in addition to a pattern of corrupt activity.

152. Plaintiffs, William Turchyn and Maria Turchyn, state and allege that as the direct and proximate cause of defendant's conduct, hereinabove stated, plaintiffs, William Turchyn and Maria Turchyn, have been injured, harmed and damaged.

153. Plaintiff, William Turchyn, states that defendants, Constantine, Antony, Nakonachny, Mahlay, and Heretz, since March 12, 1995 solicited and received funds from St. Vladimir's primarily for the Patriarch Mystyslav Endowment Fund, St. Andrew's Society, Orthodox Christian Mission Center and the Museum project in South Bound Brook, New Jersey.

154. Plaintiff, William Turchyn alleges by way of example but not limitation, that defendant, Nakonachny, solicited and received $25,000.00 from St. Vladimir's in 1997 for St. Andrew's Society in violation of ORC 2923.32 (A)(1) and ORC 1315.55 (money laundering) because defendant, Nakonachny, concealed his affiliation with the Ecumenical

Patriarchate/Church of Constantinople from the members of St. Vladimir's.

155. Plaintiff, William Turchyn, further states that defendants, Constantine, Antony, Nakonachny, Estocin, Lysyj, H. Greenleaf, Heretz and Mahlay, solicited and received funds in 1999 from St. Vladimir's including parish assessments, in violation of ORC 2923.32(A)(1) and ORC 1315.55 because they did not disclose their affiliation with the Ecumenical Patriarchate/Church of Constantinople to the members of St. Vladimir's.

156. Plaintiff, William Turchyn alleges that all funds, including parish assessments, sent to the Consistory from St. Vladimir's corporate resources since March 12, 1995 should be returned to St. Vladimir's due to non-disclosure of affiliation with the Ecumenical Patriarchate/Church of Constantinople. Discovery will identify members of the Consistory and Metropolitan Council who concealed the said affiliation from the members of St. Vladimir's.

157. Plaintiff, William Turchyn, states and alleges that defendants, Constantine and Nakonachny, conspired to recklessly suppress and violate, through coercion and intimidation, the First Amendment Constitutionally protected rights of St. Vladimir's members to engage in peaceful assembly and to speak freely for the advancement of their religious beliefs in collusion with members of the Board of Trustees identified as "persons".

158. Plaintiff, William Turchyn, states and alleges that the members of St. Vladimir's have the civil right to be free of unlawful conspiracies that interfered or deprived them of their State and Federally protected United States Constitutional rights. Defendants, Constantine and Nakonachny, violated this right and defendant members of the Board of Trustees listed as "persons" failed to recognize this right and instead, recklessly colluded, aided and abetted defendants, Constantine and Nakonachny.

159. Plaintiff, William Turchyn, further states and alleges that defendants, Constantine, Antony and Nakonachny, individually or in concert with others, in a clandestine and secretive way, set out to strip plaintiffs, William Turchyn and

Maria Turchyn, and in fact, the entire St. Vladimir's congregation of their property by conspiring with others to have the congregationally organized St. Vladimir's Church and congregation stripped of its property and constitutional right guarantees, duties and obligations and by subterfuge, move St. Vladimir's congregation, property and holdings into a foreign (non-Ukrainian) religious organization that was a hierarchical church, The Ecumenical Patriarchate/Church of Constantinople in violation of ORC 2923.32 (A)(1) and 2923.32 (A)(2).

160. Plaintiff, William Turchyn and Maria Turchyn, further state and allege in a pattern of corrupt activity, defendants, Constantine, Antony and others who have yet to be identified, concealed from said plaintiffs and the members of St. Vladimir's, the purposes, intent, terms, conditions and consequences of an alleged merger or consolidation of St. Vladimir's and the UOC-USA Diocese with the UOCA (Ukrainian Orthodox Church of America), an organization that was always subject to the foreign, hierarchical jurisdiction of the Ecumenical Patriarchate/Church of Constantinople and inimical to the interests of the UOC-USA Diocese and St. Vladimir's in violation of ORC 2923.32 (A)(1) and 2923.32 (A)(2).

161. Plaintiffs, William Turchyn and Maria Turchyn, further state and allege that a merger or consolidation was approved by the 1995 Sobor of the UOC-USA Diocese and a parallel Sobor of the UOCA.

162. Plaintiffs, William Turchyn and Maria Turchyn, further state that no evidence resides with the Office of the Ohio Secretary of State that a merger or consolidation of the UOC-USA Diocese and the UOCA was effectuated in compliance with any prerequisite statute or ORC 1715 (Religious and Benevolent Societies).

163. Plaintiffs, William Turchyn and Maria Turchyn, state and allege further that the members of St. Vladimir's were recklessly denied by defendants, Constantine, Antony, Nakonachny and others yet to be discovered, any opportunity before or after the 1995 Sobor to review, to discuss, to approve or disapprove, in prerequisite with any statute of ORC 1715, the alleged merger or consolidation which is alleged to have

occurred on or about November 10, 1996 in a pattern of corrupt activity in violation of ORC 2923.32 (A)(1) and 2923.32 (A)(2).

164. Plaintiff, William Turchyn states and alleges that defendant, Kristof, pastor of St. Nicholas Ukrainian Orthodox Church in Lakewood, Ohio, a UOCA parish, conspired and colluded with defendants, Antony, Nakonachny, Steliac, Mahlay and the Board of Trustees defendants identified as "persons", to divert the property and assets of St. Vladimir's to the Ecumenical Patriarchate/Church of Constantinople by falsely portraying "unity" of St. Vladimir's and the UOC-USA Diocese under the jurisdiction of the Ecumenical Patriarchate/Church of Constantinople in violation of ORC 2923.32 (A)(1), 2923.32 (A)(2), ORC 2923.01 and ORC 2923.01.

165. Plaintiff, William Turchyn, states that defendant, Kristof, knew or should have known that the alleged merger of UOCA and the UOC-USA Diocese did not meet the requirements of ORC 1715 and recklessly concealed this from St. Vladimir's Board of Trustees in a pattern of corrupt activity in violation of ORC 2923.32 (A)(1). Rev. Kristof had no standing, privilege or authority, to intervene into the administrative matters of St. Vladimir's, which he violated knowingly, intentionally and willfully.

166. Plaintiffs, William Turchyn and Maria Turchyn, state and allege that as the direct and proximate cause of defendant's conduct, hereinabove stated, plaintiffs, William Turchyn and Maria Turchyn, have been injured, harmed and damaged.

167. Plaintiffs, William Turchyn and Maria Turchyn, state and allege that on July 18, 1999, in a pattern of corrupt activity, defendant, Nakonachny, without approval of the members of St. Vladimir's, and with no authority or privilege other than of his own creation, removed the sacred Antimines and holy relics from St. Vladimir's.

168. Plaintiffs, William Turchyn and Maria Turchyn, allege further that St. Vladimir's was the owner of the Antimines, which are square embroidered cloths into which sacred and holy relics are sewn and are essential for the performance of Divine Liturgy in conformity to Ukrainian

Orthodox religious tradition.

169. Plaintiffs, William Turchyn and Maria Turchyn, allege that the original Antimines and holy relics were obtained at the time of parish organization in 1924 – 1925 from Bishop Teodorivych. Two additional Antimines were purchased by St. Vladimir's Board of Trustees on or about June 14, 1965.

170. Plaintiffs, William Turchyn and Maria Turchyn, state and allege further that the act of removing the Antimines and holy relics from the ownership and possession of St. Vladimir's constitutes the unlawful theft and desecration of property by defendant, Nakonachny, with the knowledge and collusion of defendants, Constantine, Steliac and Mahlay, and others yet to be discovered, in a pattern of corrupt activity.

171. Plaintiff, William Turchyn, alleges that the theft of the Antimines and holy relics by defendant, Nakonachny, violated ORC 2923.32 (A)(1), ORC 2913.02 (A) (theft), ORC 2913.01, ORC 2923.03 and ORC 2927.11 (desecration) in a pattern of corrupt activity.

172. Plaintiff, William Turchyn alleges that defendant, Constantine, received the stolen property in violation of ORC 2923.32 (A)(1), ORC 2913.01, ORC 2923.03, ORC 2913.51 and ORC 2927.11 in a pattern of corrupt activity.

173. Plaintiff, William Turchyn, alleges that defendants, Steliac and Mahlay, conspired with defendants, Nakonachny and Constantine, in violation of ORC 2923.32 (A)(1). ORC 2913.01, and ORC 2923.03 in a pattern of corrupt activity.

174. Plaintiffs, William Turchyn and Maria Turchyn, further state that when defendant, Nakonachny, replaced the existing Antimines and holy relics with new Antimines and holy relics, the intent was to sever St. Vladimir's from spiritual communion with the Mother Church in Kyiv, Ukraine to a new Mother Church, the Ecumenical Patriarchate/Church of Constantinople in a pattern of corrupt activity with the knowledge and collusion of defendants Constantine, Steliac and Mahlay in violation of ORC 2923.32 (A)(1), ORC 2931.01 and ORC 2923.03.

175. By virtue of the replaced Antimines and holy relics, defendants, Nakonacnny, Constantine, Steliac, Mahlay and

others yet to be discovered, diverted the intent of St. Vladimir's Founders to the Ecumenical Patriarchate/Church of Constantinople, without the approval of the members of St. Vladimir's in a pattern of corrupt activity with reckless disregard of the consequences of their act and in violation of ORC 2923.32 (A)(1), ORC 2931.01, and ORC 2923.03.

176. The replacement of the Antimines and holy relics deprived the plaintiffs, William Turchyn and Maria Turchyn, and all members of St. Vladimir's the 1st Amendment Constitutional right of freedom to worship in familiar surroundings in a pattern of corrupt activity.

177. Plaintiffs, Williams Turchyn and Maria Turchyn, state and allege that they had freely joined St. Vladimir's, an Autocephalous, congregational Ukrainian Orthodox parish in spiritual communion with the Mother Church in Kyiv, Ukraine. Plaintiffs, William Turchyn and Maria Turchyn, did not give their approval, nor was their approval asked for, to be joined by deception to the foreign, non-Ukrainian, hierarchical Ecumenical Patriarchate/Church of Constantinople, symbolized by the arbitrarily replaced Antimines and holy relics, that betrayed and diverted the intent of St. Vladimir's Founders.

178. Plaintiffs, William Turchyn and Maria Turchyn, state further that the unanimous demand by the Board of Trustees to have the old Antimines and holy relics returned to St. Vladimir's on October 13, 1999 was an acknowledgement that St. Vladimir's was deprived of a property right, the immediate and actual right to possession, and without the consent of the owners and without lawful justification. The protection of church property for church purposes by the Board of Trustees was ignored by defendants, Constantine and Nakonachny, who refused to recognize the validity of the decision by the Board of Trustees.

179. Plaintiffs, William Turchyn and Maria Turchyn, state and allege that as the direct and proximate cause of defendant's conduct, hereinabove stated, plaintiffs, William Turchyn and Maria Turchyn, have been injured, harmed and

damaged.

180. Plaintiffs, William Turchyn and Maria Turchyn, further state and allege that defendant, Geofrey Greenleaf, acting individually and in his capacity as President of defendant, Greenleaf Capital Mgt., continued said tortious conduct by defendants, Constantine and Nakonachny, against plaintiff, William Turchyn, by recklessly publishing and mailing an additional defamatory letter on behalf of himself individually and on behalf of defendant, Greenleaf Capital Mgt. (see Exhibit D1).

181. Plaintiff, William Turchyn, states and alleges that defendants, G. Greenleaf and Green leaf Capital Mgt., in pursuit of imposing a "hierarchical church" structure upon St. Vladimir's violated ORC 2923.32 (A)(1) in addition to ORC 2903.01 and ORC 2923.03 in a pattern of corrupt activity.

182. Plaintiff, William Turchyn, states further that defendants, G. Greenleaf and Greenleaf Capital Mgt., knew or should have known that the information presented for consumption to the members of St. Vladimir's as to the actions of plaintiff, William Turchyn, was fraudulent, misrepresented and concealed material facts, causing the intentional infliction of mental distress, anguish and other harm to plaintiff, William Turchyn.

183. Plaintiff, William Turchyn's, reputation has been severely damaged as a result of said defamation and other tortious conduct on the part of defendants, G. Greenleaf and Greenleaf Capital Mgt., that will be more specifically identified with discovery.

184. Plaintiff, William Turchyn, states and alleges that defendant, Kominko, recklessly aided, abetted and facilitated the defamation of plaintiff, William Turchyn, by defendants, G. Greenleaf and Greenleaf Capital Mgt., in a pattern of corrupt activity in violation of ORC 2923.32 (A)(1), ORC 2923.01 and ORC 2923.03.

185. Plaintiffs, William Turchyn and Maria Turchyn, state and allege that as the direct and proximate cause of defendant's conduct, hereinabove stated, plaintiffs, William Turchyn and Maria Turchyn, have been injured, harmed and

damaged.

186. Plaintiff, William Turchyn, further states and alleges defendants, Kominko, G. Greenleaf and Greenleaf Capital Mgt., conspired to libel and slander plaintiff, William Turchyn, and violate his good name via ORC 2923.31 (F).

187. Plaintiff, William Turchyn, further states and alleges that said publication by defendants, G. Greenleaf, Greenleaf Capital Mgt. and Kominko, was malicious and intended to injure plaintiff, William Turchyn's, character, reputation and good standing in the St. Vladimir Congregation, Board of Trustees and plaintiff, Williams Turchyn's, standing as President of the Brotherhood organization of St. Vladimir's.

188. Plaintiff, William Turchyn, further states and alleges that defendant, Helen Greenleaf, caused libelous materials to be republished (or restated) that was willful and wanton on her part and done with reckless intent to injure or harm plaintiff, William Turchyn, before the annual parish meeting on January 30, 2000.

189. Plaintiff, William Turchyn, further states and alleges that defendants, Helen Greenleaf, Roman Malysz and Lydia Shkurko, recklessly circulated petitions that falsely portrayed plaintiff, William Turchyn, regarding his character and veracity that was done with intent to harm plaintiff, William Turchyn, before the annual parish meeting on January 30, 2000, and violate his good name via ORC 2923.31 (F).

190. Plaintiff, William Turchyn, further states and alleges that defendants, G. Greenleaf's, Greenleaf Capital Mgt.'s and Kominko's, reckless actions were to intentionally inflict emotional distress to plaintiff, William Turchyn.

191. Plaintiff, William Turchyn, further states and alleges that defendant, Helen Greenleaf, individually and acting in concert with defendant, Geoffrey Greenleaf, and other defendants caused publications and republications of libelous and slanderous defamatory statements and publications that were malicious and recklessly intended to harm and injure plaintiff, William Turchyn's, character, reputation and good standing in the St. Vladimir congregation, board of trustees and as president of the Brotherhood organization of St. Vladimir's, and violate his good name via ORC 2923.31 (F).

192. Plaintiff, William Turchyn, further states and alleges that defendants, Geoffrey Greenleaf, Greenleaf Capital Mgt., Helen Greenleaf, Kominko, and other defendants and other persons recklessly conspired and colluded to continue to pursue the defamation against plaintiff, William Turchyn, by preparing a petition against plaintiff, William Turchyn, in a continued and reckless assault on the character and moral fitness of Plaintiff, William Turchyn, to remain in the St. Vladimir congregation that was malicious and intended to inflict harm on said plaintiff, William Turchyn.

193. Plaintiff, William Turchyn, further states and alleges that defendants, G. Greenleaf and Greenleaf Capital Mgt., conspired and colluded to transfer all property and assets that were vested in the St. Vladimir congregation into the possession of the hierarchs of the UOC-USA organization to the detriment and loss of parishioners, plaintiffs, William Turchyn and Maria Turchyn, and all of the other members of the St. Vladimir congregation in a pattern of corrupt activity.

194. Plaintiff, William Turchyn, further states and alleges that defendant, Helen Greenleaf, knew or should have known of defendant, Nakonachny's, scheme to take away the property rights of plaintiffs, William Turchyn and Maria Turchyn, as well as all of the members of the congregation of St. Vladimir's.

195. Plaintiff, William Turchyn, further states and alleges that defendant, Helen Greenleaf, knew or should have known that it was defendant, Nakonachny's, willful, wanton, and malicious actions and intentions to injure or harm plaintiff, William Turchyn.

196. Plaintiff, William Turchyn, further state and allege that defendant, Helen Greenleaf, breached her duty and obligations as a member of the Metropolitan Council to stop said tortious conduct, but in fact, colluded with other defendants to continue to take actions in an effort to harm plaintiff, William Turchyn.

197. Plaintiff, William Turchyn, further alleges that defendants, Pawuk, Burlij, Burscu, Kotelewec, Hutnik, Michailuk, Ponomarenko and Wrubel, while acting in the course and scope of their duties as board of members of the Board of

Trustees of St. Vladimir's negligently breached their fiduciary duties to said congregation of St. Vladimir's and plaintiff, William Turchyn and Maria Turchyn, by failing to act to cause defendants named as "persons' to cease and desist their pattern of corrupt activity by virtue of their authority proved them under the Constitution and By Laws of St. Vladimir's. Defendants negligently failed to supervise defendant, Nakonachny. Defendants negligently breached the contract between members of St. Vladimir's and between members of the Board of Trustees to act in good faith and loyalty to one another, by negligently not defending the membership rights of plaintiff, William Turchyn, the threat of unilateral action by defendants, Constantine or Nakonachny, to suspend parish membership, without cause or due process, remained for every member of St. Vladimir's.

198. Plaintiff, William Turchyn, further alleges that defendants, G. Greenleaf, Shkurko, Boyko, Dobronos, Sr., Harasimchuk, Komichak, Malysz, Samocha and Sirko-Osadsa, while acting in the scope of their duties as board members of the Board of Trustees, intentionally breached their fiduciary duties to plaintiffs, William Turchyn and Maria Turchyn, and to said congregation of St. Vladimir's by acting in a pattern of corrupt activities and reckless, egregious conduct. Defendants recklessly and intentionally breached Sobornopravnist and the intent of St. Vladimir's Founders; misused positions of trust with willful acts of misconduct; consciously disregarded the truth when the truth was equally open to all members of the Board of Trustees; refused to recognize legal decisions of the said Board; intentionally failed to supervise defendant, Nakonachny; and became willing participants in the scheme to defraud St. Vladimir's of property and assets in a pattern of corrupt activity. Defendants obstructed plaintiff, William Turchyn's, investigation of corrupt activity; breached intentionally the covenant of good faith and loyalty between members of the Board of Trustees; intentionally breached the contract between members of St. Vladimir's, and left unaddressed the unilateral threat by defendants, Constantine or Nakonachny, to suspend parish membership, without cause or due process, for any member of St. Vladimir's as part of a pattern of corrupt activity.

199. Plaintiff, Maria Turchyn, is the wife of plaintiff, William Turchyn, and has suffered her own personal humiliation, injury and harm as a result of the tortious conduct of the herein above stated defendants.

200. Plaintiff, Maria Turchyn, lost the love, care, companionship, trust, services and consortium of her husband as a result of the tortious conduct of the hereinabove stated defendants.

201. Plaintiffs, William Turchyn and Maria Turchyn, state and allege that as the direct and proximate cause of defendants' conduct hereinabove stated, plaintiffs, William Turchyn and Maria Turchyn, have been injured, harmed and damaged.

WHEREFORE, the Plaintiffs demand judgment against the defendants Rev. John R. Nakonachny, Dr. Anatolij Lysyj, Rev. Frank Estocin, Michael Heretz, Geofrey Greenleaf, Greenleaf Capital Management, Fr. Deacon Ihor Mahlay, Metropolitan Constantine, Archbishop Antony, Rev. Volodymyr Steliac, Rev. Dennis Kristof, Michael Kominko, Lydia Shkurko, Eugene Boyko, Michael Dobronos, Sr., Hans Harasimchuk, Lucy Komichak, Roman Malysz, Olga Samocha, Deborah Sirko-Osadsa, Helen Greenleaf, as follows:

A. Damages in an amount reasonably calculated to compensate the plaintiffs for their injuries which the plaintiffs believe exceed $250,000.00;
B. Damages in an amount reasonably calculated to punish and make the defendants an example in an effort to deter further criminal and wrongful acts;
C. Treble damages;
D. Reasonable attorney fees;
E. The costs of litigation;
F. Interest;
G. Order the return of all Antimines and holy relics to St. Vladimir's from the possession of defendant, Constantine;
H. Permanently enjoin defendants, Constantine, Antony, Estocin, Nakonachny, Steliac, Mahlay and Kristof from the use and benefit of St. Vladimir's property and

facilities;

I. Order an independent audit by a reputable firm or agency of St. Vladimir's finances commencing from March 12, 1995 to current date to determine (a) the amount of corporate wealth depleted from St. Vladimir's as a result of a pattern of corrupt activity and (b) the beneficiaries of depletion as a result of the pattern of corrupt activity;

J. Order the return of any St. Vladimir's wealth depleted through unjust enrichment and/or a pattern of corrupt activity to St. Vladimir's from the beneficiaries of the depletion;

K. Declare the congregational polity and ownership of St. Vladimir's via Neutral Principles of Law;

L. Order the permanent forfeiture of any "person" defendant member of the Board of Trustees to ever serve as a member of said Board of Trustees found to be in violation of a pattern of corrupt activity;

M. Order the alleged merger of UOCA and the UOC-USA Diocese, and affiliated parishes thereof, to be null and void in the State of Ohio for failing to follow statutory pre-requisites of ORC 1715;

N. Order the reinstatement of William Turchyn as a member in good standing of St. Vladimir's and the UOC-USA Diocese with an apology to plaintiffs, William Turchyn and Maria Turchyn, for any unjust acts as the Honorable Court deems just;

O. Any other remedies this Honorable Court deems just and proper.

WHEREFORE, plaintiffs, William Turchyn and Maria

Turchyn, pray for a judgment of defendants, Pawuk, Burlij, Burscu, Kotelewec, Hutnik, Michailuk, Ponomarenko and Wrubel in the amount of twenty-five thousand ($25,000.00) dollars compensatory damages, attorney fees and court costs.
Respectfully submitted,

[S] _____

JOHN J. GILL, #0024028
1370 Ontario St., #1220
Cleveland, OH 44113
(216) 771-2680 phone
(216) 771-8735 fax
Attorney for Plaintiffs

JURY DEMAND

Plaintiffs hereby demands a trial by jury.

[S] _____

JOHN J. GILL
Attorney for Plaintiff

ARTICLE 1.

The St. Vladimir's Ukrainian Orthodox Cathedral of Metropolitan Cleveland, Ohio was organized in October, A.D. 1924, and on the 10th day of July, A.D. 1925, the Charter of the Corporation was granted by the Secretary of the State of Ohio recorded under Corp. No. 117326, in Vol. 312, page 683, of the Records of Incorporation.

ARTICLE 2.

This corporation shall be known as a religious corporation by the name and style of: ST. VLADIMIR'S UKRAINIAN ORTHODOX CATHEDRAL of Metropolitan Cleveland, Ohio.

ARTICLE 3.

The aim of this religious corporation shall be:

To perform all the religious duties towards its members according to the dogmas and rules of "The Holy Eastern Orthodox Church and of the Ukrainian Orthodox Church of the United States of America"; to bring up in religious and moral spirit the Ukrainians of the Orthodox faith; to spread the knowledge among older and younger members as well as to deepen among them the respect for the Divine Laws and those of this country and perform all other duties, which belong to the sphere of action of the church as such.

ARTICLE 3A.

No person affiliated with any communistic or any other subversive organization shall be a member of this congregation, and if any member should become affiliated with any communistic or any other subversive organization such a member will be expelled by the Board of Trustees.

ARTICLE 4.

Any person of Christian faith and good moral character who shall acknowledge the dogmas of the Ukrainian Orthodox Church of the United States of America, and shall obey its Constitution and rules may become a member. Every person, upon being accepted by the Board of Trustees as a member of the St. Vladimir's Ukrainian Orthodox Cathedral shall pay annual dues, as shall be agreed upon by the majority of all members at the annual meeting of this corporation. The annual dues shall be due and payable on or before December 31st of each year. All funds so and otherwise collected shall be used for the maintenance and promotion of the corporate interests.

ARTICLE 5.

The principal office of this corporation shall be located in Metropolitan Cleveland, Ohio, at the Parish office of the St. Vladimir's Ukrainian Orthodox Cathedral.

ARTICLE 6.

Article 6 is hereby repealed.

ARTICLE 6.1.

The managing Board of Trustees of St. Vladmir's Ukrainian Orthodox Cathedral shall consist of eighteen (18) Trustees to be elected and to hold office in the following manner; six (6) for a period of three (3) years; six (6) for a period of two (2) years; six (6) for a period of (1) year. The congregation shall elect at every annual meeting six (6) Trustees for three (3) years according to this article.

ARTICLE 7.

The Trustees shall elect from among themselves an EXECUTIVE COMMITTEE, consisting of President, First (1st) and Second (2nd) Vice President, Recording Secretary, Financial Secretary, and Treasurer, whose duty it shall be to superintend, conserve and control all the property of the corporation, in accordance with the governing laws of such corporation and the directions of its members.

ARTICLE 8.

Upon approval of the members of this corporation the Trustees may purchase, erect, and improve or rebuild or mortgage, all property of said corporation; Also, enter into contracts not in violation of the governing law of such corporation, except in the case of maintenance of corporation properties, then the Trustees shall approve any normal operating expenditures.

ARTICLE 9.

The annual meeting of this Corporation shall be held no later than the last Sunday of January and in the afternoon of said day at an hour to be determined by the Board of Trustees.

Notice of such Annual meeting shall be given to the members of this corporation by announcing the same from the pulpit for two (2) Sundays immediately preceding such meeting and also with a written notice. Twenty percent 20% or more paid members of this corporation shall constitute a quorum to do business. In the case of the absence of such quorum the meeting will be extended to the first (1st) open Sunday on said corporate calendar, when with adequate written notice, ten percent (10%) or more paid up members of this corporation shall constitute a quorum to do business.

ARTICLE 10.

At the annual meeting of this Corporation each paid up member as of December 31st of the current calendar year, therefore, shall be entitled to one vote for the election of each Trustee and on all other issues as submitted to the decision of the members by voting. Only members present at the meeting shall have the right to vote.

ARTICLE 11.

A General meeting of the Parish shall decide all elections or decisions by a show of hands by members in good standing. A written ballot can be used on issues decided by the membership at the meeting.

ARTICLE 12.

A special meeting of this corporation may be called by the President, Vice President or in their absence by the Recording Secretary upon notice sent to each member by mail, at least three (3) days preceding such meeting, not including the date of mailing and such notice shall state the time and date of meeting and shall briefly set forth the purpose, for which such meeting is called. Should it be possible, the Priest may announce such meeting from the pulpit at least one (1) week before such meeting takes place. Twenty percent (20%) or more paid up members of this corporation shall constitute a quorum to do business. In the case of the absence of such quorum the meeting will be extended to the first (1st) open Sunday on said corporation calendar, when with adequate written notice, ten percent (10%) or more of paid up members of this corporation shall constitute a quorum to do business.

ARTICLE 12A.

A semi-annual meeting of this corporation shall be held at a date determined by the Board of Trustees. Twenty percent (20%) or more of paid up members of this corporation shall

constitute a quorum to do business. In case of the absence of such quorum the meeting will be extended to the first (1st) open Sunday on said corporation calendar, when with adequate written notice, ten (10%) or more of paid up members of this corporation shall constitute a quorum to do business.

ARTICLE 13.

The congregation or trustees by a majority vote may remove a trustee from office in case of his failure to properly discharge his duties as such trustee, or for any conduct in violation of the Constitution and By-Laws of this corporation, or for disloyalty to such corporation, or for any other misconduct not becoming to such trustee.

ARTICLE 14.

Article 14 is hereby repeated.

ARTICLE 14.1.

The legal name of this corporation ST. VLADIMIR'S UKRAINIAN ORTHODOX CATHEDRAL shall never be altered, changed or repealed without unanimous consent of all paid-up members of the congregation.

ARTICLE 15.

The St. Vladimir's Ukrainian Orthodox Cathedral of Metropolitan Cleveland, Ohio shall always be spiritually connected with THE UKRAINIAN ORTHODOX CHURCH of the United States of America and it shall always be under the spiritual jurisdiction of its spiritual head, and his legal successors in office.

ARTICLE 16.

Article 16 is hereby repealed.

ARTICLE 16.1.

The priest of the St. Vladimir's Ukrainian Orthodox Cathedral shall always be of Ukrainian nationality or of Ukrainian descent, who shall be under the canonical jurisdiction of the above mentioned Metropolitan or his legal successor in office, and absolutely no other. Every priest, before he takes charge of this church, shall identify himself with the necessary documents from the spiritual head of the Ukrainian Orthodox Church mentioned above, or from his legal successor in office.

ARTICLE 17.

Article 17 is hereby repealed.

ARTICLE 17.1.

The PROPERTY of this corporation real or personal, shall always belong to the congregation and shall be managed by the Board of Trustees, elected as stated in Article 6.1 of this constitution, and shall under no circumstances be sold, transferred or conveyed to any bishop, diocese, person or corporation of any other religious organization without the unanimous consent of all paid-up members of the congregation except when such sale is for purpose of acquiring another church building or property for said corporation.

ARTICLE 18.

In case it would appear that the corporation is unable to keep a permanent priest and to carry on a regular work belonging to the sphere of action of such church, the Board of Trustees shall communicate with the spiritual head by whom they shall be advised what is best to do in such situation.

ARTICLE 19.

Article 19 is hereby repealed.

ARTICLE 19.1.

Should ever the circumstances turn so bad that it would be absolutely impossible to keep the church, then the paid-up members by unanimous vote shall have the right to sell the church property and after paying all the legal and just debts shall turn the remaining cash—if any—to such Ukrainian benevolent or cultural institution as upon which the majority of the remaining members shall agree. Any member who has not been a paid-up member for at least the previous five (5) consecutive years shall have no vote under this section.

ARTICLE 20.

No person not a paid-up member of this corporation shall be eligible to election as a member of the Board of Trustees.

ARTICLE 21.

Vacancies in the Board of Trustees or in any of the offices of this corporation shall be filled at the regular or special meeting of said corporation and a quorum at such meetings shall be the majority of all the paid-up members of such corporation.

ARTICLE 22.

Such duly elected Trustee or Officer shall take office immediately and hold same for the unexpired term of his predecessor in office.

ARTICLE 23.

At each annual meeting of the trustees of this

corporation the following officers shall be elected: President, First (1st) and Second (2nd) Vice President, the Recording Secretary, the Financial Secretary and the Treasurer. The Trustees annual meeting shall be held not later than thirty (30) days after the annual meeting of the corporation.

ARTICLE 24.

The congregation at each Annual Meeting shall elect a committee to be known as The Board of Control consisting of five (5) members. It shall be the duty of The Board of Control to audit the books of the Corporation at least once (1) every six months of the year or whenever it may deem necessary. The Board of Control shall give an audit report to the congregation at each Semi-

St. Vladimir's
Ukrainian Orthodox Cathedral
5913 State Rd. • Parma, Ohio 44134-2864
Parish Office: (440) 886-3223

Pastor	Assistant Pastor
Rev. John R. Nakonachny	Rev. Volodymyr Steliac
3201 Marioncliff Dr.	3211 Marioncliff Dr.
Parma, Ohio 44134-3459	Parma, Ohio 44134-3459
Telephone: (440) 885-1509	Telephone: (440) 886-1528

November 26, 1999
Commemoration of St. John Chrysostom,
Archbishop of Constantinople

Mr. William Turchyn
6357 Denison Boulevard
Parma Heights, Ohio 44130

Dear Mr. Turchyn,

Slava Isusu Christu!

For a number of years, in our private and public discussions on the teachings of our Holy Orthodox Church—our Holy Ukrainian Orthodox Church—it has saddened and amazed me to note how someone who desires to be a leader of that Church has such a false and distorted concept of its history and purpose.

Your attempt to change the basic tenet that our Church is a hierarchical church is beyond comprehension. The Holy Fathers of our Church have written on this teaching for centuries.

St. Ignatius writes "I advise you, be eager to act always in Godly harmony: with the bishop presiding as the counterpart of God, the priests as the counterpart of the council of the Apostles, and the deacons who have been given a service (to perform) under Jesus Christ."

He further writes "You have only to acknowledge God and the bishop, and all is well; for a man who honors his bishop is himself honored by God."

St. Clement writes "The apostles went forth full of the joy of the Holy Spirit, proclaiming the joyful news that the Kingdom of God is at hand. They spoke in villages and cities, and they appointed the first fruits of their labors to be the bishops and deacons of the future after testing them through the Spirit.

St. Cyprian writes "My friends, you should be made aware of this fact: the bishop is in the Church, and the Church is in the bishop; and if anyone is not with the bishop, then he is not in the Church."

Our Church's teachings are very clear. Unfortunately, you are unable to accept this.

Mr. Turchyn, it is one thing for you, as a member of a Church who is struggling internally, to accept this teaching. But as a member of the Board of Trustees and as president of the Brotherhood, the demands and responsibilities placed on you to uphold the teachings of the Holy Ukrainian Orthodox Church are much greater. Unfortunately, your actions are very obviously opposite to the teachings of the Holy Orthodox Church and to the positions that you hold within our parish. I believe that you use your positions to spread false teachings regarding the true structure and purpose of the Church, which is to bring salvation to mankind. Your secular, un-Orthodox concept of the Church will damage both the spiritual and physical growth of our St. Vladimir's parish. In fact, I believe that spiritually-minded young families with children will leave our parish, rather than listen to your intrigue.

I believe that your infrequent participation in the Divine Liturgy of our parish, together with your refusal to accept the teachings of the Church, compounded by your obsession with parish finances, have contributed to this very disturbing situation.

It would be one thing if this only involved you—alone. However, you use every opportunity to expound your erroneous concept of our Church to influence others. Your obsessive conduct in sowing distrust among our faithful for our bishops—our spiritual leaders who, guided by the Holy Spirit, were elected in the Sobornopravna system—the Sobor—the people—to be our leaders, is disruptive to the Body of Christ, our Holy Ukrainian Orthodox Church and our Saint Vladimir's Parish family. This must stop.

Therefore, as a result, after consultation with His Beatitude Metropolitan Constantine, and with his approval, you have been placed on *Epitimia*—a form of spiritual suspension which surrenders your privilege to receive the Mystery of Holy Communion. This *Epitimia* will remain in effect until there is a clear manifestation of a transfiguration of heart, followed by a sincere repentance in confession.

We—your spiritual Fathers—are not your enemies. We only desire to assist you in truly understanding the purpose of the Holy Orthodox Church and the sacred role that its leaders play in its growth. We call on you to use your God-given talents to help build God's Kingdom on Earth. I personally invite you to allow me to help you develop a healthy spiritual understanding of our Church. I pray that you will act on my invitation.

Praying that the Holy Spirit will "*come and dwell within us and cleanse us from every impurity*", I remain…

Yours in Christ,

Father John R. Nakonachny
Pastor

copies: as per common custom

SUSPENSION

On November 26, 1999, at the direction of Metropolitan Constantine, Father John R. Nakonachny, Pastor of St. Vladimir's Ukrainian Orthodox Cathedral in Parma, Ohio placed a member of the Board of Trustees, Mr. William Turchyn "on Epitimia, a form of spiritual suspension which surrenders your privilege to receive the Mystery of Holy Communion. This Epitimia will remain in effect until there is a clear manifestation of a transfiguration of heart, followed by a sincere repentance in confession".

Further, Father Nakonachny states that "two, possibly three, Board of Trustees members have broken the Oath of Office that they took before God and their fellow parishioners...I call upon these individuals to...participate in the Holy Mysteries of Confession and Communion, and retake their Oath of Office in our Cathedral. If not, then for the good of our St. Vladimir's Parish, they should be removed from office".

Mr. Turchyn's and the 2 or 3 Board of Trustees TRANSGRESSION??????...according to Metropolitan Constantine's letter dated November 23, 1999 "attending a meeting held by clergy and laity of the Kyivan Patriarchate in Brunswick, Ohio on November 4, 1999 without the blessing of the Hierarchy".

The above actions have been taken by Father Nakonachny at the direction of Metropolitan.

http://www.saveouruoc.com/parma.html 01/24/2003

Greenleaf Capital Management
xxx xxx xxx xxx xx

Principal
xxx xxx xx
xxxx xxx
Research Analysis
xx xx xx xx

As you are very well aware, painfully aware, we face a crisis at St. Vladimir's. We have a vocal, strong minority, who want to wrest control away from the hierarchs and our pastor in defiance of the canons of the Ukrainian Orthodox Church of the United States of America.

To help retain control by the silent majority, I first of all urge you and others to whom I send this letter, to attend the annual meeting, and ask all your fellow parishioners to make sure that they attend as well.

Second, I am asking you to implement Mike Kominko's excellent idea. That is, would you please, yourself, sign the enclosed petition and also get as many of your fellow parishioners you know to sign this as well? I want to be able to present a fistful of these to the annual meeting body on January 30. I think this strong show of support for Father John will (a) not only be helpful to him but (b) show the entire parish that we will not be intimidated by the outrageous acts defying the hierarchs of the church, particularly in relation to Mr. Klepach's and Mr. Turchyn's suspensions.

Should you have questions or comments about this, please do not hesitate to call me at the office (216) 752-8900 or at home (440) 338-8025.

Thank you very much, and I hope you understand that we are at the cusp. This is an extremely important time. We can not weaken, and in the words of Benjamin Franklin, "We must all hang together or surely we will hang separately."

Sincerely,

XXX XXX East/XXX XXX/XXX Heights, Ohio 44122-5318/Te.(216) 752-8900/Fax.(216) 295-2405

A 69

COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY, OHIO

FILED
JUN. 07, 2004

WILLIAM TURCHYN, et al.	) CASE NO. CA 083557
Plaintiffs-Appellants	) CASE NO. CV 03 492675
vs.	)
REV. JOHN R. NAKONACHNY, et al.	) APPLICATION FOR RECONSIDERATION, en blanc, WITH ATTACHED MEMORANDUM IN SUPPORT
Defendants-Appellees	)

Now come plaintiffs, pro se, and give notice of their Application for Reconsideration, en blanc, Attached Memorandum in Support.

Respectfully submitted,

[S] _____

William Turchyn, pro se
6357 Denison Blvd.
Parma Hts., OH 44131
(440) 888-4428

[S] _____

Maria Turchyn, pro se
6357 Denison Blvd.
Parma Hts., OH 44131
(440) 888-4428

MEMORANDUM

This is a specific and formal request for the entire body of the members of the Court of Appeals, Eighth District, to fully examine the erroneous original decision of the trial court and equally erroneous affirmation by the Appellate Court.

Plaintiffs' case, which includes Constitutional dimension, legal precedent and social interest, was decided by the trial court and affirmed by the Appeals Court, on the basis of three case citation of dubious legal application and conflicting Appellate Court interpretation of Ohio RICO statutes.

Thus, not only was the veritable encyclopedia of case law presented to both courts in support of Plaintiffs' Amended Complaint totally ignored, but all of plaintiffs' legal rights, including those found in Civ. R. 8, were ruthlessly trampled upon.

The decision of the trial court, affirmed by the Appeals Court, should be reversed and remanded not only as a matter of law but also in the interest of justice.

1. THE TRIAL COURT AND THE APPEALS COURT IGNORED THE TIBBS V. KENDRICK

MANDATE, A TWO-STEP ANALYSIS TO DETERMINE WHETHER A COURT HAS SUBJECT MATTER JURISDICTION TO RESOLVE CONTROVERSIES BETWEEN MEMBERS OF A CHURCH, THUS DENYING PLAINTIFFS' 1st, 5th AND 14th AMENDMENT GUARANTEES OF DUE PROCESS AND EQUAL PROTECTION OF THE US CONSTITUTION.

In Tibbs v. Kendrick, 637 N.E. 2d 397 (Ohio App. 8 Dist. 1994), the court stated as follows:

> In resolving disputes between members of a church, a civil court MUST follow a two-step analysis in determining whether it has subject matter jurisdiction over the controversy. First, the court MUST determine whether the church is a hierarchical or congregational church. In the present case, it is undisputed that the church is congregational. Next, the court MUST consider whether the controversies presented by the case involve ecclesiastical or secular issues. In order for this court to determine whether the lower court has subject matter jurisdiction over the controversies presented by the case sub judice, this court MUST review appellants complaint to determine whether the controversies presented in each count require determination of ecclesiastical or secular issues. (Emphasis added)

The decision of the Court of Appeals was clearly erroneous as a matter of law when the Court stated that "The trial court expressly stated that it declined [subject matter] jurisdiction only over William Turchyn's "spiritual suspension"

claim because it "required interpretation of ecclesiastical issues of church governance [which is] more properly a matter for church discipline." Without a Tibbs, supra. ruling, the trial court could not possibly have decided subject matter jurisdictional questions as a matter of law.

What the Court of Appeals and the trial court failed to do was to conduct a Tibbs, supra. analysis, absolutely denying Plaintiffs', William and Maria Turchyn, 1st, 5th and 14th US Constitutional privileges and guarantees of due process of law and equal protection clauses.

In Paragraph 1 of Plaintiffs' Amended Complaint, the allegation made was that Plaintiff, William Turchyn, was a member in good standing of St. Vladimir's and the Ukrainian Orthodox Church—USA until "his civil, contractual and property rights were intentionally violated and his membership was illegally and fraudulently terminated." Further, he was serving as a board member and was designated to explore wrong doing within the diocese that had a direct property loss to Plaintiffs, their property rights in St. Vladimir's that is by

Constitution and By Law a congregational church organization.

In Paragraph 138 of Plaintiffs' Amended Complaint the allegation made was that "Defendant, Nakonachny's letter of November 26, 1999 was the product of fraud and collusion in conjunction with defendant, Constantine and continued the pattern of corrupt activity [i.e. prima facie evidence of mail fraud, an Ohio PCA predicate offense]. Defendants, Constantine and Nakonachny, had illegally placed Plaintiff, William Turchyn, "on Epitimia, a form of spiritual suspension which surrenders your privilege to receive the Mystery of Holy Communion". In fact, Plaintiff, William Turchyn was not suspended, but rather excommunicated without cause or due process from the membership of St. Vladimir's and the UOC-USA Diocese."

In paragraph 150 of Plaintiffs' Amended Complaint the allegation made was that "Defendants, Constantine and Nakonachny, had abandoned the UOC-USA Diocese that they pretended to serve and concealed that fact when plaintiff, William Turchyn, was suspended. This was reckless, outrageous

and unconscionable conduct that went far beyond all bounds of decency, atrocious and utterly intolerable in a civilized community in addition to a pattern of corrupt activity [i.e. prima facie evidence of mail fraud, an Ohio PCA predicate offense].

Not only did the trial court and the Appeals Court ignore their legal duty to conduct a Tibbs, supra. analysis, the two courts also ignored all relevant case law that clearly established subject matter jurisdiction presented by plaintiffs in their pleadings:

> Nothing we have said is intended to even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public." Cantwell v. Connecticut, 310 US 296 (1940)
>
> It may be concluded withdrawal from a church and uniting with another church or denomination is a relinquishment of all rights in the church abandoned." Bouldin v. Alexander, 82 US 131 (1872)
>
> Although the civil courts will not, in the case of persons excommunicated by competent church authority and inquire that the persons have been regularly or irregularly excommunicated, such courts may inquire whether the expulsion was the act of the

church or of persons who were not the church, and who, consequently had no right to excommunicate anyone." Id.

In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise." Gonzalez v. Roman Catholic Archbishop of Manila, 280 US 1, 17 (1929)

The US Supreme Court has yet to rule upon the issue of whether fraud and collusion are grounds for court intervention in congregational church dispute. The Gonzales decision was applicable to only hierarchical churches.

Unless internal disciplinary decisions of churches are tainted by fraud and collusion, or constitute extreme violation of civil rights of discipline member, civil court inquiry with respect to underlying reasons for church disciplinary action is constitutionally impermissible." First Baptist Church of Glen Este v. State of Ohio, 591 F. Supp. 676 (1983), at syllabus 7.

As general rule, affairs of congregational church are governed by majority of its members, unless church governing documents, to which membership have agreed or consented to be bound, specify otherwise; this principle applies to internal church disciplinary matters, including expulsion." Id., at syllabus 8.

> It is not beyond scope of inquiry for civil court to determine, in property proceeding, whether disciplinary action undertaken by church was approved or executed by that body within church required to take such action under church covenant, constitution or bylaws." Id., at syllabus 9.
>
> Function of civil courts in identifying supreme judicial body in hierarchical church which is appointed by church law to render binding decision in church disciplinary matters as well to civil court review of disciplinary proceedings in congregational church." Id., at syllabus 4.

In Tibbs, supra., the court also stated "Civil courts recognize the difference between hierarchical and congregational churches:

> A hierarchical polity exists when 'the religious congregation *** is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete, in some judicatory over the whole membership of that general organization (citations omitted)...A congregational polity, on the other hand exists when "a religious *** is strictly independent of other ecclesiastical associations, and so far as church government is concerned, owes no fealty or obligation to a higher authority." (Citation omitted)

The case law cited by plaintiffs negates the conclusion of the Appeals Court (pg. 8) that "Here, regardless of whether St. Vladimir's is a hierarchical or congregational church, the

propriety of suspending a parishioners privilege to receive Holy Communion is purely an ecclesiastical matter," citing Shariff v. Rahman, 152 Ohio App.3d 210, 2003-Ohio-1336, 787 N.E. 2d 72.

The Shariff citation has limited relevance and application to the case at bar. To distinguish Shariff from the Turchyn case at bar, one should note that plaintiff in the Shariff case did not do the following:

1. Did not exhaust internal administrative procedures to resolve the dispute;
2. Did not allege fraud, collusion and conspiracy on the part of defendants;
3. Did not allege violations of civil, contractual and property rights;
4. Did not allege the voluntary and clandestine abandonment of one religious jurisdiction for another by hierarchs, clergy and laity;
5. Did not allege the non-statutory "merger" or "consolidation" of two church jurisdictions of different polity without the approval of the congregation;
6. Did not allege "suspension" or "excommunication" of a plaintiff by defendant who had abandoned the church and had absolutely no legal right to do so;
7. Did not allege theft of parish property and the fraudulent acquisition of parish properties, resulting from the "merger", under both common law and Ohio PCA theories of law;
8. Did not allege 1st, 5th and 14th Amendment violations

of the US Constitution.

The plaintiffs in the Shariff case had adequate access to the court, in the form of a bench trial, and did not ask the court for the resolution of parish property ownership under "Neutral Principles of Law" as defined by the US Supreme Court because there was no need to. The mosque in the Shariff case was recognized by the court to be of congregational polity.

Plaintiffs have not deviated from the position that St. Vladimir's is a church of congregational polity in their Amended Complaint and extensive pleadings. Plaintiffs had submitted to the trial court the Articles of Incorporation and the Constitution and By-Laws of St. Vladimir's which clearly illustrate congregational polity as a matter of law that, both the trial court and the Appeals Court clearly ignored in their decision-making process. It is notable that defendants' efforts to "strike" the plaintiffs' pleadings were unsuccessful.

By eontrast, in paragraph 128 of Plaintiff's Amended Complaint, "Plaintiff, William Turchyn, states and alleges that the UOC-USA Diocese had made an "in trust" legal claim to all

parish properties and assets on or about June 9, 1999 which defendant, Nakonachny, supported with the fraudulent claim in said letter of August 3, 1999 that (St. Vladimir's) **"WE ARE NOT A CONGREGATIONAL PARISH."** [The letter of August 3, 1999 is prima facie evidence of mail fraud, an Ohio PCA predicate offense].

A significantly more relevant and important decision than Shariff, supra. Rendered by the Court of Appeals 8th District, which plaitniffs cited in their brief to the Appeals Court, was Iwanchuk v. Swaszenko, (No. 902018, unpublished, June 17, 1976):

> ...the courts jurisdiction is founded on and confined to its duty to safeguard property rights inherent in church membership...defendants' actions have infringed upon plaintiffs' property rights...THE PASTOR...IMPROPERLY TRANSFERRED THE (PARISH) TO THE GREEK ORTHODOX DIOCESE WITHOUT THE PERMISSION OR SANCTION OF THE PARISHIONERS (emphasis added)

Consequently, there remains the unresolved dispute as to the polity of St. Vladimir's, and ultimately, who owns the property and assets of St. Vladimir's. Only a Tibbs, supra.

ruling, ignored by both the trial court and the Appeals Court, can resolve the outstanding conflict.

2. BECAUSE NEITHER THE TRIAL COURT NOR THE APPEALS COURT FOLLOWED THE MANDATORY TIBBS, SUPRA TEST, THE PROPERTY DISPUTE WAS ERRONEOUSLY DECIDED BY DEFAULT IN FAVOR OF DEFENDANTS IN VIOLATION OF THE US CONSTITUTION'S 1st AMENDMENT FREE EXERCISE CLAUSE WHICH PROTECTS RELIGIOUS OBSERVERS AGAINST UNEQUAL TREATMENT AND THE ESTABLISHMENT CLAUSE WHICH PROHIBITS THE JUDICIAL, LEGISLATIVE OR EXECUTIVE BRANCHES OF GOVERNMENT FROM ESTABLISHING A CHURCH OR FAVORING ONE CHURCH OVER ANOTHER BEYOND THE CONCEPT OF STRICT NEUTRALITY. PLAINTIFFS' 1ST, 5TH AND 14TH AMENDMENT GUARANTEES WERE EQUALLY VIOLATED WITHOUT DUE PROCESS AND EQUAL PROTECTION WITH THE DEFAULT JUDGMENT.

The 1st Amendment severely circumscribes the role that civil courts may play in resolving church property disputes. It is obvious, however, that not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. Civil courts do not inhibit

free exercise of religion merely by opening their doors to disputes involving church property. And there are neutral principles of law, developed for use in all property disputes, which can be applied without "establishing" churches to which property is awarded". Presbyterian Church v. Hull Church, 393 U.S. 440 (1969).

The Due Process Clause of the 14th Amendment of the U.S. Constitution provides that "no State shall…deprive any person of life, liberty or property, without due process of law."

For a procedural due process claim under the 14th Amendment to succeed, a plaintiff must establish the existence of a liberty or property interest of which he was deprived by the defendant. Bd. Of Curators of Univ. Of Missouri v. Horowitz, 435 U.S. 78, 82, 98 S.CT. 948, 55 L. Ed. 2d 124 (1978). For a constitutionally protected property interest to exist, "a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead have a legitimate claim of entitlement to it." Bd. of Regents of State Collates v. Roth, 408 U.S. 564, 577, 92 S.Ct.

2701, 33 L.Ed.2d 548 (1972).

"Property interest protected by the Constitution stem from an independent source, such as state law, and are not created by the Constitution itself." Sharp v. Lindsey, 285 F.3d 479, 487 (6th Cir. 2002). A contract may serve as the independent source that protects property interests. Leary v. Saeschner, 228 F.3d 729, 741 – 42 (6th Cir. 2000).

Plaintiffs stated in Paragraph 32 of their Amended Complaint that "The Constitution and By-Laws of St. Vladimir's is a contract between St. Vladimir's and members and among members themselves," thus establishing a property right in a congregational church which was fraudulently violated.

The Constitutional inhibition against depriving any person of his property without due process of law is a restraint alike on the legislative, executive and judicial powers of the government. Den ex dem. Murray v. Hobolen Land & Imp. Co., 59 U.S. 272.

Due process requirement of a hearing before deprivation of property is not limited to protection of only a few types of

property interest. Fuentes v. Shevin, 407 U.S. 67, 92 S.Ct. 1983. Fourteenth Amendments's protection of property does not safeguard only rights of disputed ownership but extends to any significant property interest including statutory entitlements. Id.

Plaintiffs clearly outlined the danger of a church being established by a judicial fiat. What the trial court has done by nature of issuing its legally erred order, which the Court of Appeals has also erroneously affirmed, is to create a new church at St. Vladimir's, which was not created by the consent of the members and which was not created according to ORC 1715 of Ohio. In their Supplemental Brief in Opposition to Defendants' Motion to Dismiss Plaintiffs Amended Complaint, June 26, 2003 it was alleged as follows:

> The Turchyn case now before this court begins as a simple dispute of property ownership between plaintiffs and defendants. Thus, the issue is who is the rightful owner of St. Vladimir's property and assets? In order to answer this question, one must inquire into the organizational structure of St. Vladimir's. Is St. Vladimir's an independent congregational church polity of part of a larger hierarchical church organization?
>
> If the Court grants defendants' Motion to Dismiss,

it is saying in effect that St. Vladimir's parish, and by extension, the Ukrainian Orthodox Church-USA and all member parishes, at least in the State of Ohio, belong to a "hierarchical church" polity in opposition to the Plaintiffs' allegation that St. Vladimir's By-Laws and Articles of Incorporation define it as an independent 'congregational' and conciliar (democratic) polity church.

The draconian implications of defendants' Motion to Dismiss not only affects the plaintiffs in this litigation, but will also have a direct, far-reaching, and immediately hurtful impact on all members of St. Vladimir's parish and member parishes of the UOC-USA Diocese. The reason for this is because if defendants' Motion to Dismiss is granted, all congregational parishes of the UOC-USA Diocese, including St. Vladimir's, would have their property, assets and existing rights exposed to the de facto control of the "hierarchical church", defendant bishops and administrative bodies of the UOC-USA Diocese.

Plaintiffs allege that defendant Bishops have admitted in the New Jersey Court's litigation that they voluntarily abandoned UOC-USA and had become subordinate Bishops of the foreign, non-Ukrainian Church of Constantinople. Thus, if St. Vladimir's is declared to be "hierarchical," without the benefit of judicial review requested by plaintiffs under the legal concept of Neutral Principles of Law analysis [i.e. Tibbs, supra] then not only does the property and assets of St. Vladimir's become the "held in trust" property and assets of a foreign hierarchical church, but also the legal precedent is established for the transfer of assets from the member parishes of the UOC-USA Diocese in the State of Ohio to the Church of Constantinople.

> Should this Court dismiss plaintiffs' Amended Complaint along with their allegations of historically uninterrupted congregational polity at St. Vladimir's, then this Court would have inadvertently established a new Church that plaintiffs allege was the product of a fraudulent and illegal merger that gives legal recognition to that new entity in violation of Article 1.07 of the Ohio Constitution..."

It is axiomatic that parishes under the jurisdiction of a hierarchical church hold the parish properties in trust for the Bishops of the hierarchical church. It is equally axiomatic that the Founders of St. Vladimir's chose to become incorporated in the State of Ohio under a conscious decision which insured the control of their temporal affairs by the parishioners themselves and which protected their properties from alienation without their consent. Incorporation equaled not only the right to control the properties of St. Vladimir's but also to transmit property in perpetual succession. The fact that the parishioners of St. Vladimir's are trust beneficiaries of this succession is reflected in paragraph 111 of Plaintiff's Amended Complaint:

> Plaintiff, William Turchyn, further states and alleges that within said Constitution and By-Laws [of St. Vladimir's] there is a specific article: Article 17.1 (Marked Exhibits A1 & A and

> attached hereto) states: The property of this corporation, real and personal, shall, always belong to the congregation and shall be managed by the Board of Trustees, elected as stated in Article 6.1 (Marked Exhibit A2 & A2a and attached hereto) of this constitution and shall under no circumstances be sold, transferred or conveyed to any bishop, diocese, person or corporation of any other religious organization without the unanimous consent of all paid-up members of the congregation, except where such sale is for the purpose of acquiring another church building or property for said corporation.

Consequently, despite the existence of St. Vladimir's Articles of Incorporation Constitution and By-Laws that plaintiffs allege illustrate congregational polity, the decisions of the Trial Court and the Appeals Court, without the mandatory judicial review of Tibbs, supra. placed St. Vladimir's under the jurisdiction of a hierarchical church, the Church of Constantinople.

As the Tibbs, supra. decision further demonstrated, the contrasting or contradicting polities of a congregational church and a hierarchical church are such that it is impossible, as a matter of law, for both to co-exist under the same roof as one entity. Thus, the Trial Court and the Appeals Court established

some strange, new church which cannot be defined by Tibbs, supra, as a matter of law. These decisions are clearly reversible errors.

3. PLAINTIFFS' AMENDED COMPLAINT RELATIVE TO THE OHIO PATTERN OF CORRUPT ACTIVITIES, ORC 2923.31 – 36, REFLECTS THE WELL-DEFINED INTENT OF THE OHIO GENERAL ASSEMBLY. JUDICIAL INTERPRETATION BY THE TRIAL COURT AND THE APPELLATE COURT ERRONEOUSLY REDEFINED THE CLEAR INTENT OF THE GENERAL ASSEMBLY.

Federal RICO was the proto-type for Ohio PCA (Pattern of Corrupt Activities), but by no standard was it the intent of the Ohio General Assembly to subordinate Ohio PCA to Federal RICO except as specifically identified in the PCA statutes [i.e. mail fraud and wire fraud].

The text of ORC 2923.31 enumerates the essential elements necessary to establish an Ohio PCA (Pattern of Corrupt Activities) claim of engaging in a pattern of corrupt activities:

(A)(1) No person employed by, or associated with, any enterprise shall conduct or participate in, directly or indirectly, the affairs of the enterprise through a pattern of corrupt activity

or the collection of an unlawful debt.

(A)(2) No person, through a pattern of corrupt activity or the collection of an unlawful debt, shall acquire or maintain, directly or indirectly, any interest in, or control of, any enterprise or real property.

(B)(1) Whoever violates this section is guilty of engaging in a pattern of corrupt activity…Notwithstanding any other provision of law, a person may be convicted of violating the provisions of this section as well as of a conspiracy to violate one or more of those provisions under section 2923.01 of the Revised Code.

ORC 2923.01 (A) states in relevant portion that "No person, with purpose to commit or to promote or facilitate the commission of…engaging in a pattern of corrupt activity…shall do either of the following:

(1) With another person or persons, plant or aid in planning the commission of any of the specified offenses.

(2) Agree with another person or persons that one or more of them will engage in conduct that facilitates the

commission of any of the specified offenses.

(B) No person shall be convicted of conspiracy unless a substantial overt act in furtherance of the conspiracy is alleged and proved to have been done by the accused or a person with whom the accused conspired, subsequent to the accused's entrance into the conspiracy. For purposes of this section, an overt act is substantial when it is of the character that manifests a purpose on the part of the actor that the object of the conspiracy should be completed.

(L)(1) In addition to the penalties that otherwise are imposed for conspiracy, a person who is found guilty of conspiracy to engage in a pattern of corrupt activity is subject to divisions (B)(2), (3), (4) and (5) of section 2923.32 of the Revised Code.

The text of ORC 2923.03, complicity, states in relevant portion (A) that "No person, acting with the kind of culpability required for the commission of an offense, shall do any of the following…(3) conspire with another to commit the offense in violation of section 2923.01 of the Revised Code".

The elements of ORC 2923.32 are further defined in the text of ORC 2923.31 which establishes the three prerequisites to a valid Ohio PCA claim:

(C) "Enterprise" includes any individual, sole proprietorship, partnership, limited partnership, corporation, trust, union, government agency, or other legal entity, or any organization, association, or group of persons associated in fact although not a legal entity. "Enterprise" includes illicit as well as licit enterprises.

(E) "Pattern or corrupt activity" means two or more incidents of corrupt activity, whether or not there has been a prior conviction, that are related to the affairs of the same enterprise, are not isolated, and are not so closely related to each other and connected in time and place that they constitute a single event.

For the purposes of the criminal penalties that may be imposed pursuant to section 2923.32 of the Revised Code, at least one of the incidents forming the pattern shall constitute a felony under the laws of this State in existence at the time it was committed or, any other state, shall constitute a felony under the

law of the Untied States or the other state and would be a criminal offense under the law of this State if committed in this State.

(I) "Corrupt activity" means engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in any of the following:

(1) Conduct defined as "racketeering activity" under the "Organized Crime Control Act of 1970," 84 Stat. 941, 18 U.S.C. 1961 (1)(B), (1)( ), (1)(D), and (1)(E) as amended.

[Under 18 U.S.C. 1961 (1)(B) "racketeering activity" applicable to Ohio PCA includes section 1341 (relating to mail fraud) and section 1343 (relating to wire fraud) as predicate offenses].

(2) Conduct constituting any of the following [violations of the Revised Code as listed predicate offenses of Ohio PCA].

ORC 2923.31 also defines the following for Ohio PCA:

(F) "Pecuniary value" means money, a negotiable interest, a commercial interest, or anything of value, as defined in section 1.03 of the Revised Code, or any other property or

service that has a value in excess of one hundred dollars.

[ORC 1.03, "anything of value", includes (A) Money, bank bills or notes, United States treasury notes, and other bills, bonds, or notes issued by lawful authority and intended to pass and circulate as money; (B) goods and chattels; (G) Any interest in realty, including fee simple and partial interests, present and future, contingent or vested interest, beneficial interests, leasehold interests, and any other interest in realty; (I) Every other thing of value].

(G) "Person" means any person, as defined in section 1.59 of the Revised Code, and any governmental officer, employee or entity.

(J) "Real property" means any real property or any interest in real property, including, but not limited to, any lease of, or mortgage upon, real property. Real property and any beneficial interest in it is deemed to be located where the real property is located.

K) "Trustee" means any of the following: (1) Any person acting as trustee under a trust in which the trustee holds

title to personal or real property; (2) Any person who holds title to personal or real property for which any other person has a beneficial interest; (3) Any successor trustee.

ORC 2923.34 defines the civil proceedings necessary to obtain relief from alleged violations of Ohio PCA:

(B) Any person who is injured or threatened with injury by a violation of section 2923.32 of the Revised Code may institute a civil proceeding in an appropriate court seeking relief from any person whose conduct violated or allegedly violated section 2923.32 of the Revised Code or who conspired or allegedly conspired to violate that section, except that the pattern or corrupt activity alleged by an injured person or person threatened with injury shall include at least one incident other than a violation of division (A)(1) or (2) of section 1707.042 or division (B), (C), (4), (D), (F) of section 1707.44 of the Revised Code, of 18 U.S.C. 1343, or any other offense involving fraud in the sale of securities.

(C) If the plaintiff in a civil action instituted pursuant to this section proves the violation by a preponderance of the

evidence, the court, after making due provisions of the rights of innocent persons, may grant relief by entering any appropriate orders to insure that the violation will not contain or be repeated.

(E) In a civil proceeding under division (B) of this section, the court may grant injunctive relief without a showing of special or irreparable injury.

(F) In a civil proceeding under division (B) of this section, any person directly or indirectly injured by conduct in violation of section 2923.32 of the Revised Code or a conspiracy to violate that section, other than a violator of that section or a conspirator to violate that section, in addition to relief under division (C) of this section, shall have cause of action for triple the actual damages the person sustained. To recover triple damages, the plaintiff shall prove the violation or conspiracy to violate that section and actual damages by clear and convincing evidence. Damages under this division may include, but are not limited to, competitive injury and injury distinct from the injury inflicted by corrupt activity.

(M) The application of any civil remedy under this

section shall not prelude the application of any criminal remedy or criminal forfeiture under section 2923.32 of the Revised Code or any other provision of law.

Plaintiff-Appellants stated a statutory correct definition of an Ohio PCA "Enterprise" in their Amended Complaint at Paragraph 9: "The "enterprise" as defined in ORC 2923.31 (C) is St. Vladimir's. The enterprise is a LEGAL ENTITY that has an on-going business separate and apart from the pattern of corrupt activity and conspiracy alleged herein. Each of the defendants was employed by or associated with St. Vladimir's". (Emphasis added)

Plaintiff-Appellants' definition of an Ohio PCA "Enterprise" is in total harmony with the Ohio Supreme Court definition of Ohio PCA "Enterprise: State v. Schlosser, 681 N.E. 2d 911, 914 (Ohio 1997).

Defendant-Appellees, as the Appeals Court was briefed, consist of officers and employees from two distinct corporate entities, not one.

Thus, the Appeals Court erred to the prejudice of

Plaintiff-Appellants when it ruled that "Appellants failed to allege an enterprise. Because an enterprise may not be composed simply of a corporation and its officers or employees, appellants allegation that the "enterprise" consisted of all appellees, who were employed by or associated with St. Vladimir's, does not suffice. Patton v. Wilson, Cuyahoga App. Nol 82079, 2003-Ohio-3379."

Patton, supra cited by the Appeals Court in the instant case, conflicts with an earlier ruling, State v. Wilson, 682 N.E. 2d 5 (Ohio App. 9 Dist. 1996) which held that:

> Ohio courts, unlike their federal counterparts, have not defined enterprise in such a way that a defendant may be convicted of those offenses only if he or she was associated with an "enterprise" that had an existence separate and apart from the corrupt activity. State v. Habash,
>
> (Jan. 31, 1996), Summit App. No. 17073, unreported, 1996 WL 37752. Rather, a defendant may be convicted of those offenses if he was employed by or associated with an entity that meets the statutory definition of an "enterprise." See id."

Patton v. Wilson, supra. cites the ambiguities of Federal RICO case law that is not found in the well-defined Ohio PCA statute ORC 2923.31 (C) which defines "enterprise".

Even if Patton, supra was controlling, as plaintiffs' briefed the Appeals Court, defendants consist of officers and employees from two distinct corporate entities—St. Vladimir's and the UOC-USA Diocese—not one.

The Ohio Supreme Court has stated, "We emphatically remind trial courts that they should limit definitions, where possible, to those definitions provided by the legislature in order to avoid unnecessary confusion and needless appellate challenges." State v. Williams, (1998), 38 Ohio St. 3d 346, 356.

Statutory interpretation involves a question of law without giving deference to a trial court's determination. "The principles of statutory construction requires courts to first look at the specific language contained in the statute, and, if the language is unambiguous, to then apply the clear meaning of the words used." Roxane Laboratories, Inc. V. Tracy, (1996), 75 Ohio St. 3d 125, 127.

The Ohio Supreme Court held in Iddings v. Bd. of Educ. Of Jefferson Cty. Sch. Dist., 98 N.E. 827(1951):

> It has been so frequently stated as to become axiomatic that the meaning and intent of a legislative enactment are to be determined primarily from the language itself. The plain provisions of a statute must control. If there is no ambiguity therein there is no occasion to construe or interpret. To construe or interpret what is already plain is not interpretation but legislation, which is not the function of the courts. When the meaning is plain from the language employed, an attempt to construe it only tends to make ambiguous that which is simple and clear."

When interpreting Ohio PCA statutes, the Ohio Supreme Court stated in State v. Morgan, 642 N.E. 2d 1090 (Ohio 1994): "Given the well-defined intent of the General Assembly in this area, there is no room for judicial interpretation."

4. PLAINTIFF-APPELLANTS HAVE ALLEGED ORC 2923.32 (A)(2) IN THEIR AMENDED COMPLAINT WHICH DOES NOT REQUIRE THE STATUTORY ALLEGATION OF AN "ENTERPRISE" IN ORDER TO BE TRIGGERED. THE TRIAL COURT AND THE APPEALS COURT ERRED BY NOT RULING ON ORC 2923.32 (A)(2) TO THE DETRIMENT AND PREJUDICE OF PLAINTIFF-APPELLANTS. 3. THE APPEALS COURT ERRONEOUSLY AGREED WITH THE TRIAL COURT THAT PLAINTIFF-

APPELLANTS "FAILED TO ALLEGE THAT APPELLEES' CONDUCT INVOLVED THE COMMISSION TWO OR MORE OF THE SPECIFICALLY PROHIBITED STATE OR FEDERAL CRIMINAL OFFENSES AND THAT SUCH CONDUCT CONSTITUTED A PATTERN OF CORRUPT ACTIVITY' UNDER THE OHIO PCA STATUES, THUS DEPRIVING PLAINTIFFS OF DUE PROCESS AND EQUAL PROTECTION GUARANTEES OF THE 1st, 5th AND 14th AMENDMENTS OF THE US CONSTITUTION.

Plaintiffs' Amended Complaint specifically alleged as predicate offenses of Ohio PCA the following enumerated offenses which the trial court and the Appeals Court ignored:

ORC 2923.32 (A)(1), 2923.32 (A)(2), 2923.01, 2923.03, 1315.55, 2905.11, 2913.05, 2913.02, 2913.51, 18 U.S.C. 1341 and USC 1343.

The pattern of corrupt activity is demonstrated by the fact that the appellee committed the predicate act. The Ohio General Assembly has determined that if a defendant has engaged in two or more acts constituting a predicate offense, he or she is engaging in a pattern of corrupt activity and may be found guilty of an Ohio PCA claim. State v. Schlosser, 681 N.E.

2d 911 (Ohio 1997).

As a matter of law, plaintiffs have stated a claim for relief and subject matter jurisdiction.

5. PLAINTIFFS HAVE STATED A CLAIM FOR FRAUDULENT CONDUCT IN THEIR AMENDED COMPLAINT WITH THE REQUISITE PARTICULARITY, THUS ESTABLISHING AS A MATTER OF LAW CIV. R. 12(b)(1) SUBJECT MATTER JURISDICTION AND A CLAIM FOR RELIEF WHICH THE APPEALS COURT IGNORED. PLAINTIFFS WERE DENIED DUE PROCESS AND EQUAL PROTECTION UNDER THE 1st, 5th AND 14th AMENDMENTS OF THE U.S. CONSTITUTION.

Before determining whether a plaintiff has stated a claim upon which relief may be granted under Civ. R. 12(B)(6), the Court must first decide whether it has subject matter jurisdiction. City of Heath, Ohio v. Ashland Oil, Inc., 834 F. Supp. 971. 975 (S.D. Ohio 1993) (citing Moir v. Greater Cleveland Reg'l. Transit Auth., 895 F. 2d 266, 269 (6th Cir. 1990).

"Where subject matter jurisdiction is challenged under Rule 12 (B)(1), the plaintiff has the burden of proving

jurisdiction in order to survive the motion." Rogers v. Stratton Indus., 798 F. 2d 913, 915 (6th Cir. 1986). In the context of a Rule 12 (B)(1) motion, "a court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon v. King & Spalding, 467 U.S. 69, 73, 104 S.Ct. 2229, 81 L.Ed. 2d (1984). A Rule 12 (B)(1) motion to dismiss will be granted only if, taking all facts alleged by the plaintiff as true, the court is without subject matter jurisdiction to hear the claim.

Paragraph 13 of Plaintiffs' Amended Complaint lists all the criteria established by the Ohio Supreme Court to plead fraud with particularity. Burr v. Board of County Co's of Stark Cty., 491 N.E. 2d 1101, 1102 (Ohio 1986).

6. THE TRIAL COURT AND THE APPEALS COURT, IN FAVORABLY RULING ON DEFENDANTS' MOTION TO DISMISS PURSUANT TO CIV. R. 12 (b)(6), DID NOT ACCEPT OR PRESUME PLAINTIFFS' AMENDED COMPLAINT TO BE TRUE RESULTING IN REVERSIBLE ERROR UNDER THE 1st, 5th AND 14th AMENDMENTS OF THE U.S. CONSTITUTION.

In considering a Rule 12 (B)(6) motion to dismiss, the

trial court and the Appeals Court was limited to evaluating whether Plaintiffs' Amended Complaint sets forth allegations sufficient to make out the elements of a cause of action. Windsor v. The Tennessean, 719 F. 2d 155, 158 (6th Cir. 1983).

A complaint should not be dismissed under Rule 12 (B)(6) "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45 – 46, 78 S.Ct. 99, 2 L.Ed. 2d 80 (1957).

While the complaint need not specify every detail of a plaintiff's claim, it must give the defendant "fair notice of what the plaintiff's claim is and the grounds upon which it rests." Gazette v. City of Pontiac, 41 F.3d 1061, 1064 (6th Cir. 1994).

A complaint must contain either direct or inferential allegations with respect to all the material elements necessary to sustain a recovery under some viable legal theory. Scheid v. Fanny Farmer Candy Shops, Inc., 859 F.2d 434, 437 (6th Cir. 1988).

In the case at bar the trial court stated in the first

paragraph of its Journal Entry that:

> Plaintiffs, former parishioners of St. Vladimir's Ukrainian Orthodox Church, brought this action against various individuals associated with the church, collectively, "defendants." Plaintiffs' complaint alleges intentional violations of their civil, contractual and property rights, as well as fraudulent termination of plaintiff, William Turchyn's, church membership.

On page 2 of Appellees Brief to the Appeals Court defendants alleged that Plaintiff, Maria Turchyn, is a "former parishioner" of St. Vladimir's. This is a false statement that repeats the same error committed by the trial court in its Journal Entry. In Defendants' Motion to Dismiss, page 6, footnote 1, Defendants' stated that "Plaintiff Maria Turchyn is still officially a paid member of the parish, but is no longer actively involved with parish activities."

Because Plaintiff, Maria Turchyn, remains a valid member of St. Vladimir's her status will trigger the operation of ORC 2923.32 (A)(2) of the Ohio PCA statute as a recovery under a viable legal theory in addition to establishing subject matter jurisdiction.

7. THE APPEALS COURT ERRONEOUSLY CONCLUDED TWICE THAT ST. VLADIMIR'S "CHOSE TO BE AFFILIATED WITH THE ECUMENICAL PATRIARCH IN TURKEY," CONCLUSIONS NOT SUPPORTED BY EITHER THE PLAINTIFFS' AMENDED COMPLAINT OR PLEADINGS, THUS DISTORTING THE PLAINTIFFS' ALLEGATIONS THAT NO STATUTORY "MERGER" OCCURRED BETWEEN ST. VLADIMIR'S AND THE ECUMENICAL PATRIARCH, NOT ACCEPTING PLAINTIFFS' COMPLAINT AS TRUE UNDER CIV. R 12(b)(6) AND CONTRIBUTING TO THE ERRONEOUS CONCLUSION THAT PLAINTIFFS FAILED TO 'STATE A CLAIM UNDER OHIO RICO.' PLAINTIFFS WERE, AS A RESULT, DEPRIVED OF 1st, 5th AND 14th AMENDMENT PROTECTIONS AND GUARANTEES OF THE U.S. CONSTITUTION.

The Appeals Court ruled that:

> In their second and third assignments of error, appellants contend that the trial court abused its discretion over their claims. Specifically, appellants assert that the trial court had jurisdiction to determine whether St. Vladimir's acted appropriately when the diocese AND ST. VLADIMIR'S chose to be affiliated with the Ecumenical Patriarch in Turkey (pg 7)…It should be noted that the trial court did not dismiss appellants' claims as to the 1995 decision to be affiliated with the Ecumenical Patriarch in Turkey because it lacked subject matter jurisdiction. Instead, the trial court expressly stated

> that...Appellants' claims as to the 1995 decision [was] dismissed for failure to state a claim under Ohio RICO [pg. 8]...The decision of the diocese AND ST. VLADIMIR'S to be affiliated with the Ecumenical Patriarch in Turkey is not a designated crime under Ohio and federal criminal statutes constituting corrupt activity [pg. 10)" [emphasis added]

Plaintiffs' Amended Complaint stated the following paragraphs:

> 159. Plaintiff, William Turchyn, further states and alleges that defendants, Constatine, Makonachny and Antony individually or in concert with others, in a clandestine and secretive way, set out to strip plaintiffs', William and Maria Turchyn, and in fact, the entire St. Vladimir's congregation of their PROPERTY by conspiring with others to have the congregationally organized St. Vladimir's Church and congregation stripped of its PROPERTY and constitutional right guarantees, duties and obligations and by subterfuge, move St. Vladimir's congregation PROPERTY AND HOLDINGS into a foreign (non-Ukrainian) religious organization that was a hierarchical church, the Ecumenical Patriarchate/Church of Constantinople IN VIOLATION OF ORC 2923.21 (a)(1) AND 2923.32 (a)(2) (emphasis added)
>
> 160. Plaintiff, William Turchyn and Maria Turchyn, further state and allege in a pattern of corrupt activity [i.e. Mail Fraud, and Ohio PCA predicate offense], defendants, Constantine, Antony and others who have yet to be identified, concealed from said plaintiffs and the members of St. Vladimir's, the purposes, intent, terms, conditions and consequences of an alleged

merger or consolidation of St. Vladimir's and the UOC-USA Diocese with the UOCA (Ukrainian Orthodox Church of America), an organization that was always subject to the foreign, hierarchical jurisdiction of the Ecumenical Patriarch/Church of Constantinople and inimical to the interest of the UOC-USA Diocese and St. Vladimir's IN VIOLATION OF ORC 2923.32 (a)(1) AND 2923.32 (A)(2) (emphasis added)

161. Plaintiffs, William Turchyn and Maria Turchyn, further state and allege that a merger or consolidation was approved by the 1995 Sobor [conciliar government requiring parish approval] of the UOC-USA Diocese and a parallel Sobor of the UOCA.

162. Plaintiffs, William Turchyn and Maria Turchyn, further state that no evidence resides with the Office of the Ohio Secretary of State that a merger or consolidation of the UOC-USA Diocese and the UOCA was effectuated in compliance with any prerequisite state of ORC 1715 (Religious and Benevolent Societies).

163. Plaintiffs, William Turchyn and Maria Turchyn, state and allege further that the members of St. Vladimir's were recklessly denied by defendants, Constantine, Antony, Nakonachny and others yet to be discovered, any opportunity before or after the 1995 Sobor to review, to discuss, to approve or disapprove, in prerequisite with any statute of ORC 1715, the alleged merger or consolidation which is alleged to have occurred on or about November 10, 1996 in a pattern or corrupt activity IN VIOLATION OF ORC 2923.32 (A)(1) AND 2923.32 (A)(2) (emphasis added)

It is within the subject matter jurisdiction of a civil court to assess the validity, force and effect under the mandatory Ohio laws of any actual or purported merger of St. Vladimir's with any other entity, whether incorporated or unincorporated and whether foreign or domestic and to issue declaratory judgment with respect to the validity, force and effect of such actual or purported merger.

Although affiliation of St. Vladimir's with the Church of Constantinople would not have been an Ohio PCA violation, if in fact it had occurred, what makes it a crime under Ohio PCA is that no merger occurred and the property of St. Vladimir's was fraudulently acquired under ORC 2923.32 (A)(1) and 2923.32 (A)(2) for the Church of Constantinople. Thus, plaintiffs clearly stated a valid Ohio PCA claim.

Plaintiffs introduced to the trial court and the Appeals Court prima facie evidence, the 1998 Yearbook of the Greek Orthodox Archdiocese of America, that clearly shows St. Vladimir's and the UOC-USA Diocese to be under the jurisdiction of the hierarchical Church of Constantinople despite

the fact that no merger occurred legally. The trial court and the Appeals Court ignored this evidence.

Plaintiffs selected the 1998 Yearbook for the court's review for only one reason: 1998 was one year before the controversy erupted at St. Vladimir's, thus offering graphic proof, unrefuted by defendants despite the opportunity to do so, that the property of St. Vladimir's was acquired fraudulently well before plaintiff, William Turchyn, began his mandated investigation in 1999 into allegations that the UOC-USA Diocese claimed itself to be a "hierarchical church" with parish assets held in "trust" for the "hierarchical church".

Plaintiff, William Turchyn's, investigation is summarized in paragraph 131 of Plaintiffs' Amended Complaint:

> 131. Plaintiff, William Turchyn, further states and alleges that when he, acting in his capacity as a member of the board of trustees, reported to the board of trustees on September 12, 1999 on the information he had compiled of corruption in the Metropolitan Council [the second highest administrative body of UOC-USA] and at St. Vladimir's, the Board of Trustees did not heed the warnings in violation of their fiduciary duties.

It was the direct result of plaintiff, William Turchyn's, continuing investigation, after September 12, 1999, that plaintiff was "suspended" fraudulently by a bishop and priest who had abandoned the church and had no right, ecclesiastically or secularly, to do so in order to stop the investigation.

8. PLAINTIFFS PLEADED FRAUD, MAIL FRAUD AND WIRE FRAUD WITH THE REQUIRED SPECIFICITY IN THEIR AMENDED COMPLAINT WHICH THE APPEALS COURT RECOGNIZED IN THEIR DECISION BUT IGNORED TO THE PREJUDICE OF THE PLAINTIFFS WHEN THEY ERRONEOUSLY AGREED WITH THE TRIAL COURT "THAT PLAINTIFFS' BLANKET ALLEGATIONS OF WRONGDOING ON THE PART OF CHURCH OFFICIALS AND PARISHIONERS DO NOT SATISFY THE UNIVERSAL COACH (SUPRA) TEST," THUS DEPRIVING PLAINTIFFS OF 1ST, 5TH AND 14TH AMENDMENT PROTECTIONS AND GUARANTEES OF THE U.S. CONSTITUTION.

The Motion to Dismiss Plaintiffs' Complaint Against All Defendants cited Civ. R. 12(B)(1), 12(B)(2), 12(B)(5), 12(B)(6) and 9(B) failure to plead fraud with particularity. The trial court did not rule against plaintiffs on 12(B)(2), 12(B)(5) and 9(B).

The Appeals Court stated that "Appellants allege that

both the 1995 decision and the 1999 decision [alleged recognition by the Church of Constantinople and the alleged "suspension" of plaintiff, William Turchyn] constituted a pattern of corrupt activity, fraud, and a scheme to defraud St. Vladimir's members of property and assets."

Mail fraud and wire fraud are predicate offenses of Ohio PCA based on Federal statute 18 U.S.C. 1341 and 1343. In Carpenter v. U.S., 484 U.S. 19, 25 n. 6 (1987), the U.S. Supreme Court stated:

> The mail fraud and the wire fraud statutes share the same language in relevant part, and accordingly we apply the same analysis to both set of offenses.

In Davis v. Beason, 133 U.S. 333, 342 – 343 (1890), the U.S. Supreme Court stated:

> However free the exercise of religion may be, it must be subordinate to the criminal laws of [our] country.

Consequently, as stated in United States v. Moon, 718 F.2d 1210, 1227 (2d Cir. 1983):

> The First Amendment does not insulate a church or its members from judicial inquiry when a charge is made that their activities violate a penal statute.

To convict a defendant of wire fraud (or mail fraud) plaintiffs must prove "(1) a scheme or artifice to defraud; (2) use of interstate wire communications (or U.S. Mail) in furtherance of the scheme; and (3) intent to deprive a victim of money or property.: United States v. Prince, 214 F3d. 740, 747 – 48 (6th Cir. 2000).

A scheme to defraud includes any plan or course of action by which someone intends to deprive another by deception of money or property by means of false or fraudulent pretenses, representations, or promises. United States v. Gold Unlimited, Inc., 177 F3d. 472, 479 (6th Cir. 1999). The scheme to defraud element required under [18 U.S.C.] 1341 is not defined according to a technical standard. The standard is a 'reflection of moral uprightness, of fundamental honesty, fair play and right dealing in the general and business life of members of society. United States v. Van Dyke, 605 F2d 220, 225 (6th Cir. 1979). In Neder v. United States, 527 U.S. 1, 25 (1999) the U.S. Supreme Court stated that reliance and damages are not elements of mail fraud and wire fraud statutes:

> The Government is correct that the fraud statutes did not incorporate all the elements of common-law fraud. The common-law requirements of "justifiable reliance" and "damages," for example, plainly have no place in the Federal fraud statutes. By prohibiting the "scheme to defraud," rather than the completed fraud, the elements of reliance and damage would be clearly inconsistent with the statutes Congress enacted.

The mail and wire fraud statutes do not require proof that the intended victim was actually defrauded; the actual success of a scheme to defraud is not an element of either U.S.C. 1341 or 1343. United States v. Merklinger, 16 F.3d 670, 678 (6th Cir. 1994).

To convict a defendant of either mail fraud or wire fraud plaintiffs must prove specific intent not only that a defendant must knowingly make a material misrepresentation or knowingly omit a material fact, but also that the misrepresentation or omission must have the purpose of inducing the victim of fraud to part with property or undertake some action that he would not otherwise do absent the misrepresentation or omission. United States v. DeSantis, 134 F.3d 760, 764 (6th Cir. 1998).

Clearly, for the Appeals Court to state (pg. 10) that "Appellants allege that when the pastor collected the money [$25,000.00], he failed to disclose an "affiliation" with the Ecumenical Patriarch in Turkey. The failure to disclose this affiliation is not a designated crime under Ohio and Federal criminal statutes constituting "corrupt activity," is absolutely erroneous as a matter of law and interpretation of Ohio PCA statutes. Plaintiffs have alleged that the defendant pastor, Nakonachny, clandestinely abandoned the church for another jurisdiction and fraudulently maintained a silence when there was a duty to speak, thereby violating the Ohio PCA mail fraud statue when defendant [Nakonachny] fraudulently solicited from St. Vladimir's and received funds.

When an employee breaches fiduciary duty to disclose information to his or her employer, such breach of duty can support mail or wired conviction only if non-disclosed information was material to conduct of employer's business and nondisclosure could or does result in harm to employer. United States v. Feldman, 711 F.2d 758 (1983). A scheme which deprives employer of honest and faithful services of an

employee or the right to have business conducted in an honest manner can constitute a scheme to defraud under the mail fraud statute. Id.

Federal courts have held that the mail fraud statute may be used as a RICO predicate even though the conduct charged is also covered by another, more specific statute, that is not a RICO predicate act. [Mailing of fraudulent tax return proper mail fraud RICO predicate and not improper because tax fraud is not RICO predicate] Hofstetter v. Fletcher, 860 F.2d 179 (6th Cir. 1988).

Consequently, each incident of mail or wire fraud may result in at least two predicate acts of Ohio PCA; the incident itself and the intangible right of honest services.

To establish mail fraud, it is not necessary for all aspects of alleged scheme to be illegal in their separate parts, but rather only that scheme viewed as a whole involve fraudulent conduct. United States v. Keane, 522 F.2d 534, (1974). Co-conspirators need not have knowledge of every detail of plan. Id.

The determination by both the trial court and the Appeals Court that plaintiffs' "blanket allegations of

wrongdoing" does not satisfy Ohio PCA requirements is erroneous.

Paragraph 3 of Plaintiffs' Amended Complaint states clearly that "the pattern of corrupt activity claims of this suit is separate from common law claims arising from and intertwined with the same facts by which plaintiffs, William and Maria Turchyn, allege to have suffered compensable harm caused by predicate acts sufficiently related to constitute a pattern and also violations of common law as hereinafter stated."

Under Civ. R. 8 plaintiffs made the defendants aware that mail fraud and wire fraud were being alleged, plaintiffs made defendants, defendants' counsel and the trial court aware in defendant, Michael Dobronos', First set of Interrogatories and Request for Production of Documents (March 3, 2003) that "plaintiffs have prepared approximately 10,000 pages of documentation to support allegations stated in the amended complaint." Where necessary to isolate mail fraud or wire fraud allegations in the Amended Complaint, plaintiffs used the determination of "pattern of corrupt activity" to satisfy Civ. R. 8

[Each allegation may have consisted of more than one document].

From March 3, 2003 until the trial court made its decision on September 3, 2003 neither defendants' counsel nor the trial court used any available pre-trial procedure [i.e. Civ. R. 12 (E), motion for a more definite statement or Civ. R. 12(F) motions to strike portions of the pleadings] or a PCA/RICO case statement to define more narrowly so as to do substantial justice. Courts may consider RICO case statements in assessing whether plaintiffs' RICO claims should be dismissed. Greek Radio Network of America, Inc., v. Vlasopoulos, 731 F.Supp. 1227, 1234.

9. UNRESOLVED CONFLICT EXISTS IN OHIO APPELLATE COURTS PERTAINING TO THE MEANING OF THE WORD "ENTERPRISE". CASE LAW CITED IN THE INSTANT CASE AGAINST PLAINTIFFS BY THE TRIAL COURT, UNIVERSAL COACH, INC. V. NEW YORK CITY TRANS. AUTH., (1993), OHIO APP. 3D 284, 291 AND PATTON V. WILSON, CUYAHOGA APP. NO. 82079, 2003-OHIO-3879, CONFLICTED WITH DECISIONS OF OTHER APPELLATE DISTRICTS, AS BRIEFED AND CITED BY PLAINTIFFS TO THE APPEALS COURT WITH THE SUGGESTION THAT THE COURT EITHER

DETERMINE THE QUESTION OF LAW OR CERTIFY A CONFLICT AMONG APPELLATE COURTS TO THE OHIO SUPREME COURT FOR RESOLUTION. BECAUSE THE APPEALS COURT DID NOT RESOLVE THE CONFLICT, PLAINTIFFS' 1ST, 5TH AND 14TH AMENDMENT US CONSTITUTION PROTECTIONS AND GUARANTEES WERE VIOLATED.

In State of Ohio v. Zorn, (Ohio App. 2 Dist. 1999) WL 64254, unpublished, the court stated:

> Zorn claims the States evidence at trial failed to establish the existence of an enterprise because it was not demonstrated that (1) there was an ongoing organization with commonality of purpose or guiding mechanism to direct the organization, (2) there was a continuing unit with an ascertainable structure and (3) there was an organizational structure separate and apart, or distinct, from the pattern of predicate acts. Zorn's argument implicitly urges us to adopt the requirements for finding an enterprise as they have developed under the federal RICO status, citing United States v. Roccobene, (C.A. 3, 1983) 709 F.2d 214, and United States v. Bledsoe, (C.A. 8 1982) 674 F.2d 647. Both of those cases relied on Turkette, in which the United States Supreme Court described the governments obligation to prove both the existence of an enterprise and a pattern or corrupt activity in RICO cases as follows:
>
> In order to secure a conviction under RICO, the Government must prove both the existence of an "enterprise" and the connected "pattern of racketeering activity." The enterprise is an entity,

for present purposes a group of persons associated together for a common purpose of engaging in a course of conduct. The pattern of racketeering activity is, on the other hand, a series of criminal acts as defined by the statute. (Cite omitted). The former is proved by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit. The latter is proved by evidence of the requisite number of acts of racketeering committed by the participants in the enterprise. While the proof used to establish these separate elements may in particular cases colesce, proof of one does not necessarily establish the other. The "enterprise" is not the "pattern of racketeering activity"; it is an entity separate and apart from the pattern of activity in which it engages. The existence of an enterprise at all times remains a separate element which must be proved by the Government. The Tenth District Court of Appeals of Ohio has followed Riccobene in requiring the three federal elements of an enterprise to be proved for conviction. State v. Warren, (Dec. 31, 1992), Franklin App. No. 92AP-604, unreported. The Court of Appeals in the Eighth District has also relied on federal interpretations of the RICO statute in holding the federal requirement that the structure of an enterprise be separate and apart from the predicate acts must be satisfied for the existence of an enterprise to be proven under the Ohio corrupt activity statue. US Demolition & Contracting, Inc. V. O'Rourke Const. Co., (1994), 94 Ohio App.3d 75, 84 – 85, 640 N.E. 2d 235; Universal Coach, Inc. v. New York Transit Auth., Inc. (1993), 90 Ohio App. 3d 737, 742, 682 N.E. 2d 5. In so holding, the court noted that the Ohio statue was directly adopted from the federal RICO act.

Although the State concedes that a conviction under the Ohio corrupt activity statue requires proof on all three of the federal elements constituting an enterprise, Ohio courts have not wholeheartedly embraced that position. Our sister court in the Ninth District, for instance, has rejected the notion that an enterprise must possess the attributes described in the three federal elements. State v. Wilson (1996), 113 Ohio App.3d 737, 742, 682 N.E. 2d 5. The court has reasoned that the legislature's broad definition of "enterprise" in RC 2923.31(C) "encompasses informal, unstructured associations and even a single individual," and is incompatible with a requirement that formal structure, continuous existence, or existence separate from the criminal activity in which it engages be shown. State v. Habash (Jan. 31, 1996), Summit App. No. 17073, unreported.

This court, along with the Fifth District Court of Appeals, has resolved cases questioning the existence of an enterprise under the corrupt activity statute without reference to the federal requirements. State v. McDate, (Nov. 20, 1991) Miami App. No. 90 CA 46 unreported; State v. Kinsey, (Nov. 30, 1995), Holmes App. No. CA-515, unreported. Instead, we applied the facts before us to the statutory definition of "enterprise" found in RC 2923.32( ) without resort to the federal elements and found that the existence of an enterprise was proved.

We need not resolve the dissonance between those courts that require the enterprise to exist separate and apart from the corrupt activity and those that do not because we find ample evidence in the

> record of the existence of an organizational structure beyond what was required for the participants to sell drugs. That the proof of the enterprise and the proof of the pattern of corrupt activity substantially overlap does not preclude a finding that Faehl's enterprise was separate and apart from the pattern of corrupt activity engaged in by Zorn. The Supreme Court recognized as much in Turkette, supra.

The Schlosser decision resulted from a conflict within the Ohio Appellate District as to the meaning of the men's rea issue in Ohio PCA statute. As in Schlosser, it is suggested that this court either determine the following question of law or certify a conflict among Appellate Courts to the Ohio Supreme Court to answer the following legal question:

Must an enterprise under Ohio PCA, RC 2923.32(C), possess the three elements of Federal RICO found in the Universal, supra., or can Ohio PCA cases be resolved by defining an enterprise under the Ohio PCA statute without referencing the three Federal ROCO elements adhered to in the Zorn, supra. Case?

10. THE TRIAL COURT AND THE APPEALS COURT ERRED AS A MATTER OF LAW BY FAILING TO APPLY THE CORRECT

STANDARD OF REVIEW WHEN GRANTING THE DEFENDANTS CIV. R. 12 (b)(6) MOTION TO DISMISS PLAINTIFFS' COMPLAINT BASED UPON ALLEGATIONS AND ASSERTIONS CONTAINED OUTSIDE THE PLEADINGS. THUS, DENYING PLAINTIFFS 1ST, 5TH AND 14TH AMENDMENT PROTECTIONS AND GUARANTEES.

A Motion to Dismiss for a Rule 12(B)(6) failure to state a claim upon which relief may be granted is procedural and tests the sufficiently of the compliant. State ex rel. Hanson v. Guernsey Cty. Bd. Of Comm'rs., (1992), 65 Ohio St. 3d 545. The trial court must presume all factual allegations contained in the complaint to be true and make all reasonable inferences in favor of the non-moving party. Mitchell v. Lawson Milk Co., (1988), 40 Ohio St. 3d 190, 192. Dismissal pursuant to Rule 12(B)(6) is appropriate only where it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.

York v. Ohio State Hwy. Patrol, (1991), 60 Ohio St. 3d 143, 144. The trial court may consider only the statements and facts contained in the pleadings, and may not consider or rely on

evidence outside the complaint. Estate of Sherman v. Millhon, (1995), 104 Ohio App.3d 614.

In the case at bar, defendants' motion to dismiss relies on information that is not contained in the complaint. Specifically, Defendants' Reply Memorandum in Support of Their Motion to Dismiss (July 24, 2003) states at page 6:

> Plaintiffs also conveniently neglect to inform the court that in February of 2000, William Turchyn, requested that his name be removed from parish membership (See February 4, 2000 Resignation Letter of Plaintiff William Turchyn, addressed to the President of the Board of Trustees. A TRUE AND ACCURATE COPY IS ATTACHED AS TAB 1 TO EXHIBIT A. AFFIDAVIT OF GEOFREY GREENLEAF, PRESIDENT OF THE BOARD OF TRUSTEES OF ST. VLADIMIR'S UKRAINIAN ORTHODOX CATHEDRAL.) PLAINTIFFS CANNOT SET FORTH AN ACTUAL CONTROVERSY RELATING TO PARISH MEMBERSHIP BECAUSE THE ONLY "FACT" ESTABLISHED BY PLAINTIFFS (I.E. THE 11-26-99 LETTER) DOES NOT EVIDENCE AND CANNOT SUPPORT THE ALLEGATION THAT DEFENDANTS REMOVED MR. TURCHYN FROM THE PARISH MEMBERSHIP. RATHER THE ONLY AUTHENTICATED EVIDENCE RELATING TO MEMBERSHIP MR. TURCHYN'S RESIGNATION FROM THE PARISH." (emphasis added)

When a motion to dismiss presents matters outside the pleadings, the trial court may either exclude the extraneous matter from its consideration, or treat the motion as one for summary judgment and dispose of it pursuant to Civ. R. 56. However, a trial court may not, on its own motion, convert a Rule 12(B)(6) motion to dismiss to a motion for summary judgment and thus dispose of it without giving notice to the parties of its intent to do so and fully complying with Rule 12(B) and Rule 56 in its considerations. Powell v. Vorys, (1998), 131 Ohio App. 3d 68.

Civ. R. 12(B) provides, in relevant part:

> When a motion to dismiss for failure to state a claim upon which relief can be granted presents matters outside the pleading and such matters are not excluded by the court, the motion shall be treated as a motion for summary judgment and disposed of as provided in Rule 56, provided however, that the court shall consider only such matters outside the pleadings as are specifically enumerated in Rule 56. All parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by Rule 56."

Under Civ. R. 56(c), only "pleadings, depositions, answers to interrogatories, written admissions, AFFIDAVITS, transcripts of evidence in the pending case, and written stipulations of fact" are permitted to support a motion for summary judgment." (Emphasis added)

The document attached to defendants motion to dismiss is a matter "outside the pleadings." Accordingly, the trial court was obligated to covert the motion to dismiss into a motion for summary judgment. THE "SHALL" LANGUAGE IN THE TEXT OF CIV. R. 12(B) IS MANDATORY. A court can only go beyond the averments in the complaint in the complaint if it converts the motion to dismiss into a motion for summary judgment. Petrey v. Simon, (1983), 4 Ohio St. 3d 154, 156.

The Judgment Entry of the trial court does not indicate such a conversion. Because the records does not reflect a conversion the trial court was confined to the averments of the complaints, which were sufficient to state a claim based on the fact that fraud and mail fraud were pleaded with prerequisite specificity.

It must be noted that Defendants' Motion to Dismiss Plaintiff' Complaint Against All Defendants cited Civ. R. 12(B)(1), 12(B)(2), 12(B)(5) and 12(B)(6) for lack of subject matter jurisdiction, failure to state a claim, lack of personal jurisdiction, improper service and 9(B) failure to plead fraud with particularity. The trial court did not rule against Plaintiff on 12(B)(2), 12(B)5 and 9(B).

When a trial court converts a motion to dismiss into one for summary judgment, it must notify all parties. Federated Dept. Stores, Inc. v. Lindley, (1987), 30 Ohio St. 3d 135, 137; Petrey, supra. At 156. A trial court commits reversible error when it fails to notify the parties that it is converting a Rule 12(B)(6) motion into one for summary judgment. State ex rel Boggs v. Springfield Local School Dis., (1995) 72 Ohio St. 3rd 95. Even if the trial court had converted Plaintiff' motion to dismiss into one for summary judgment, it failed to give notice as mandated by Civil Rules.

The Appeals Court compounded the error of the trial court, thus denying plaintiffs Constitutional guarantees of due

process and equal treatment and redress of grievances.

Plaintiffs reiterate to the Appeals Court, en banc, the point plaintiffs concluded to the three judge Appeals Court Panel in plaintiff's original Brief on Appeal.

CONCLUSION

In conclusion, Plaintiffs contend that the pleading standards of Civ. R. 8 have been met in the case at bar. Plaintiff-Appellants, William and Maria Turchyn, have stated sufficient facts to demonstrate a common law action of fraud and an Ohio PCA action intertwined with the same factual allegations. Inexplicably, neither Defendants nor the trial court recognized that the instant case consists of two parts: The first is a Tibbs ruling of a congregational polity. If congregational, then non-ecclesiastical issues of clandestine abandonment, non-statutory merger of two different church polities, property rights inherent to a congregational church, the "suspension" of plaintiff, William Turchyn, by improper authority, and the other non-ecclesiastical issues surrounded by fraud, collusion and conspiracy could have been addressed in discovery by the

parties in dispute. The second part, Ohio PCA violations, could only proceed after a Tibbs finding in favor of the issue of a congregational polity. Instead, the trial court ruled on the Ohio PCA violations first without make a Tibbs finding regarding the organizational legal nature of the church. Thus, the judicial process was reversed and justice has been denied to the plaintiffs.

Plaintiffs ask the Appeals Court to issue an order reversing the decision of the trial court, reinstating Plaintiffs' Amended Complaint and remanding the action back to the trial court for a trial on the issues after reasonable time for discovery has been completed.

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FILED
JUL. 27, 2004

IN THE SUPREME COURT OF OHIO

William S. Turchyn, et al	:	On Appeal from the Cuyahoga
	:	County Court of Appeals,
Appellant,	:	Eighth Appellate District
	:	
vs.	:	Court of Appeals
	:	Case No. 83557
Rev. John R. Nakonachny, et al	:	
	:	
Appellees.	:	

NOTICE OF APPEAL OF APPELLANT WILLIAM S. TURCHYN

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Notice of Appeal of Appellant William S. Turchyn, et al

Appellant William S. Turchyn, hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Cuyahoga County Court of Appeals, Eighth Appellate District, entered in Court of Appeals case no. 83557 on June 14, 2004.

This case raises substantial public policy questions arising under Article 1 Section 7 of the Ohio Constitution and the 1st, 5th and 14th Amendments of the US Constitution, which civil courts have jurisdictional authority to decide, dealing with religious organizations [i.e. clandestine abandonment of one church polity for another, fraud and collusion, illegal merger of churches], Ohio corporate law relative to property interests of parishioners in a church of congregational polity, and is of public or great interest because of conflicting opinions in Ohio Appellate Court rulings on the definition of "Enterprise" found in Ohio's Pattern of Corrupt Activities Act as distinguished from Federal RICO definitions of an "Enterprise". The erroneous decision of the trial court and the appeals court also committed acts of religious discrimination to the prejudice of plaintiffs.

Respectfully submitted,

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SERVICE

A copy of the foregoing Notice of Appeal of Appellant William S. Turchyn has been filed with the Ohio Supreme Court and a copy of same sent by regular US Mail this 27th day of July, 2004 to the following:

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IN THE SUPREME COURT OF OHIO

William S. Turchyn, et al	:	On Appeal from the Cuyahoga
	:	County Court of Appeals,
Appellant,	:	Eighth Appellate District
	:	
vs.	:	Court of Appeals
	:	Case No. 83557
Rev. John R. Nakonachny, et al.	:	
	:	
Appellees.	:	

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT, WILLIAM S. TURCHYN

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the decisions of other Ohio Appellate Districts which we also raised in the Court of Appeals below. The Eighth District Court's failure to either certify this conflict to you, the Ohio Supreme Court, to decide or to at least make an initial determination on its own resulted in a denial of plaintiffs' 1st, 5th and 14th Amendment Protections of the US Constitution and Article 1 Section 7 of the Ohio Constitution ---------- A 156

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PROOF OF SERVICE ----------

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EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

This case raises substantial public policy questions arising under Article 1 Section 7 and the 1st, 5th and 14th Amendments of the US Constitution, which civil courts have jurisdictional authority to decide dealing with religious organizations [i.e. clandestine abandonment of one church polity for another, fraud and collusion, illegal merger of churches], Ohio corporate law relative to property interests of parishioners in a church of congregational polity, and is of public or great interest because of conflicting opinions in Ohio Appellate Court rulings on the definition of "Enterprise" found in Ohio's Pattern of Corrupt Activities Act as distinguished from Federal RICO definitions of an "Enterprise". The erroneous decision of the trial court and the appeals court also committed religious discrimination to the prejudice of plaintiffs.

STATEMENT OF THE CASE AND FACTS

Appellant, William Turchyn, was a member of the Board of Trustees of St. Vladimir's Ukrainian Orthodox Cathedral in

1999 and appellant, Maria Turchyn, is and has been a member in good standing of St. Vladimir's since 1962.

St. Vladimir's is a church of congregational polity governed by its parishioners in accordance with the Articles of Incorporation and the Constitution and By-Laws.

Appellant, William Turchyn, was mandated by the President of the Board of Trustees to investigate a Diocesan Church lawsuit in New Jersey that allegedly affected the congregational polity and property ownership of St. Vladimir's by the parishioners in Ohio.

Appellant, William Turchyn, reported his initial findings to the Board of Trustees, which raised suspicions of fraud and corrupt activity, which would negatively affect St. Vladimir's congregational polity and the religious rights of each parishioner including plaintiffs. These revelations included an alleged merger of St. Vladimir's with the Church of Constantinople which, in effect, eliminated and replaced St. Vladimir's independence and congregational polity based on a Constitution and By-Laws with a hierarchical church status. Also eliminated

by this purported merger was the property rights inherent to membership in a congregational church.

As a result of presenting this report, on November 26, 1999, William Turchyn was "suspended" by appellees, Nakonachny and Constantine, who acted in a fraudulent, deceitful and coercive manner in order to suppress the initial findings of appellant and stop any further investigation of this sensitive property right congregational church matter at St. Vladimir's.

Appellant, William Turchyn, brought the issue of wrongful suspension to the proper authority at St. Vladimir's, the Board of Trustees, who had collectively remained silent in violation of their fiduciary responsibilities. The loss of property rights and church privilege was especially flagrant with the fraudulent "suspension" of appellant, William Turchyn by defendants who had clandestinely abandoned the church and had no religious authority to "suspend" or "excommunicate" anyone at St. Vladimir's under constitutional case law precedent.

Appellants, William and Maria Turchyn, filed a Complaint on November 26, 2001, which was voluntarily dismissed by appellants under Civ. R. 41 (A)(1) without

prejudice on February 20, 2002. Appellants then refiled a more clearly defined complaint on January 24, 2003 and Amended that one on February 4, 2003 to include additional defendants and more detailed allegations or wrongdoing by the defendants.

Appellants filed answers to interrogatories submitted by defendant, Dobronos. Appellants also submitted an additional 10,000 pages of discovery to all defendants for their consideration and copying prior to defendants' Collective Motion to Dismiss. The trial court failed to consider this additional evidentiary material when ruling on defendants' Motion to Dismiss plaintiffs' Amended Complaint.

On May 5, 2003, a Motion to Dismiss was filed by defendants and various responsive and supplemental pleadings were filed by both sides, which the trial court erroneously ignored to the prejudice of plaintiffs.

On September 3, 2003 the trial court wrongfully granted defendants' Motion to Dismiss plaintiffs' Amended Complaint and an appeal was timely filed by appellants.

The appeals court erroneously affirmed the decision of the trial court on May 27, 2004 and plaintiffs' request for en banc

reconsideration was denied by the appeals court on June 14, 2004. A timely appeal to the Ohio Supreme Court was then filed.

The decision of the trial court was made without a mandatory Tibbs v. Kendrick analysis and on the basis of one flawed religious case citation that ignored the constitutional principle that only religious belief and not secular acts committed in the name of religion is protected by the 1st Amendment. Plaintiffs' allegations of clandestine abandonment, fraud and collusion and illegal church merger are secular matters not protected by the 1st Amendment which civil courts have the right to review under constitutional case law precedents. These allegations were totally ignored by the trial court and the appeals court to the prejudice of plaintiffs in violation of the 1st, 5th and 14th Amendments of the US Constitution and Article 1 Section 7 of the Ohio Constitution. The decision of the appeals court also triggers a claim by plaintiffs of religious discrimination based on disparate treatment.

Plaintiffs' Ohio Pattern of Corrupt Activities claim was prematurely dismissed and based on two flawed case citations that ignored plaintiffs' pleadings of conflict in the Ohio

Appellate Courts on the definition of "enterprise" found in RC 2923.31(c) of Ohio PCA. Furthermore, Ohio PCA could not and should not have been decided as a matter of law until the polity of the church was first determined as either congregational or hierarchical under the mandatory Tibbs v. Kendrick analysis.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. I: Civil Courts have subject matter jurisdiction under Article I Section 7 of the Ohio Constitution and the 1st, 5th and 14th Amendments of the US Constitution to determine church polity—either congregational or hierarchical—and must do so as a prelude to deciding who owns the disputed property ownership under Neutral Principles of Law.

In Tibbs v. Kendrick, 637 N.E. 2d 397 (Ohio App. 8 Dist. 1994), the court stated as follows:

> In resolving disputes between members of a church, a civil court MUST follow a two-step analysis in determining whether it has subject matter jurisdiction over the controversy. First, the court MUST determine whether the church is a hierarchical or congregational church. In the present case, it is undisputed that the church is congregational. Next, the court MUST consider whether the controversies presented by the case involve ecclesiastical or secular issues. In order for this court to determine whether the lower court has subject matter jurisdiction over the controversies presented by the case sub judice,

> this court MUST review appellants complaint to determine whether the controversies presented in each count require determination of ecclesiastical or secular issues. A hierarchical polity exists when 'the religious congregation *** is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete, in some judicatory over the whole membership of that general organization (citations omitted)...A congregational polity, on the other hand exists when "a religious *** is strictly independent of other ecclesiastical associations, and so far as church government is concerned, owes no fealty or obligation to a higher authority."

What the Court of Appeals and the trial court failed to do was to conduct a Tibbs, supra analysis, absolutely denying plaintiffs', William and Maria Turchyn, 1st, 5th and 14th US Constitutional and Article I Sections 1, 5, 7 and 16 of the Ohio Constitution privileges and guarantees of due process of law and equal protection clauses.

> **Proposition of Law No. II: By neglecting to conduct the mandatory Tibbs, Supra. Legal test to identify the polity of St. Vladimir's the trial court and the appeals court egregiously committed acts of religious discrimination to the prejudice of the plaintiffs in violation of the 1st, 5th and 14th Amendments of the US Constitution and Article I Section 7 of the Ohio Constitution.**

An inference of religious discrimination based on disparate treatment requires evidence that a party was treated differently from a similarly situated party with a different religious application. Vandiver v. Hardin County Bd. Of Educ. 925 F.2d 927, 934 (6th Circ. 1991).

An attack on disparate treatment of "religious" claims invokes what is perhaps the central purpose of the Establishment Clause—the purpose of ensuring governmental neutrality in matters of religion. Epperson v. Arkansas, 393 U.S. 97, 103-104 (1968).

Plaintiffs were religiously discriminated against by the trial court and the appeals court when plaintiffs' extensive pleadings were ignored and plaintiffs were intentionally denied the mandatory legal test of Tibbs, supra. [i.e. polity of a Christian Church] which was not denied by Ohio courts to Bhatti v. Singh, 773 N.E. 2d 605, 609-610 (Ohio App. 12 Dist. 2002) [i.e. polity of Indian Sikh temple], and Sharif v. Rahman, 787 N.E. 2d 72 (152 Ohio App. 3d 2003) [i.e. polity of a Muslim mosque].

A government act that discriminates against a particular religion [also] triggers the protections of the Free Exercise

Clause [of the First Amendment of the US Constitution]. Church of the Lukumi Babalu Aye, Inc. V. City of Hialeah, 508 US 520, 532 (1993) and Article I Section 7 of the Ohio Constitution. Humphrey v. Lane, (2002), 89 Ohio St.3d 62.

> **Proposition of Law No. III: Civil Courts have subject matter jurisdiction under Article I Section 7 of the Ohio Constitution and the 1st, 5th and 14th Amendments of the US Constitution to review alleged acts of fraud and collusion in a hierarchical church. The alleged acts of fraud and collusion in a church of congregational polity has yet to be constitutionally decided by either the Ohio Supreme Court or the US Supreme Court and this presents a case of first impression which sets forth the criteria of a great issue of public interest which this Honorable Court should decide.**

Not only did the trial court and the Appeals Court ignore their legal duty to conduct a Tibbs, supra, analysis, the two courts also ignored all relevant case law that clearly established subject matter jurisdiction presented by plaintiffs in their pleadings relative to allegations of fraud and abandonment of the church:

> Nothing we have said is intended to even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public." Cantwell v. Connecticut, 310 US 296 (1940).
>
> In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church

tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise." Gonzalez v. Roman Catholic Archbishop of Manila, 280 US 1, 17 (1929) The US Supreme Court has yet to rule upon the issue of whether fraud and collusion are grounds for court intervention in congregational church dispute. The Gonzalez decision was applicable to only hierarchical churches.

Unless internal disciplinary decisions of churches are tainted by fraud and collusion, or constitute extreme violation of civil rights of disciplined member, civil court inquiry with respect to underlying reasons for church disciplinary action is constitutionally impermissible." First Baptist Church of Glen Este v. State of Ohio, 591 F. Supp. 676 (1983), at syllabus 7. As general rule, affairs of congregational church are governed by majority of its members, unless church governing documents, to which membership have agreed or consented to be bound, specify otherwise; this principle applies to internal church disciplinary matters, including expulsion." Id., at syllabus 8. It is not beyond scope of inquiry for civil court to determine, in property proceeding, whether disciplinary action undertaken by church was approved or executed by that body within church required to take such action under church covenant, constitution or bylaws." Id., at syllabus 9. Function of civil courts is in identifying supreme judicial body in a hierarchical church which is appointed by church law to render binding decision in church disciplinary matters as well to civil court review

of disciplinary proceedings in congregational church." Id., at syllabus 4.

The case law cited by plaintiffs regarding fraud and clandestine abandonment negates the erroneous conclusion of the Appeals Court (pg. 8) that "Here, regardless of whether St. Vladimir's is a hierarchical or congregational church, the propriety of suspending a parishioners privilege to receive Holy Communion is purely an ecclesiastical matter," citing Shariff v. Rahman, 152 Ohio App.3d 210, 2003-Ohio-1336, 787 N.E.2d 72.

Fraud and collusion is conduct subject to compelling state interest and regulation for the protection of society which the 1st and 14th Amendments do not protect Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 699, 709 (1976); Jones v. Wolf, 433 U.S. 595 (1979); and Md. & Va. Churches v. Sharpsburg Ch., 396 U.S. 367 (1970) [Civil tribunals may examine church rulings alleged to be the product of fraud and collusion]. Plaintiffs' Amended Complaint lists all the criteria established by the Ohio Supreme Court to plead fraud with particularity which the trial court and the appeals court ignored.

Burr v. Board of County of Stark Cty., 491 N.E. 2d 1101, 1102 (Ohio 1986).

The Shariff citation has limited relevance and application to the case at bar. To distinguish Shariff from the Turchyn case at bar, one should note that plaintiff in the Shariff case did not do the following:

1. Did not exhaust internal administrative procedures to resolve the dispute;
2. Did not allege fraud, collusion and conspiracy on the part of defendants;
3. Did not allege violations of civil, contractual and property rights;
4. Did not allege the voluntary and clandestine abandonment of one religious jurisdiction for another by hierarchs, clergy and laity;
5. Did not allege the non-statutory "merger" or "consolidation" of two church jurisdictions of different polity without the approval of the congregation;
6. Did not allege "suspension" or "excommunication" of a plaintiff by defendant who had abandoned the church and had absolutely no legal right to do so;
7. Did not allege theft of parish property and the fraudulent acquisition of parish properties, resulting from the "merger," under both common law and Ohio PCA theories of law;
8. Did not allege 1st, 5th and 14th Amendment violations of the US Constitution and Article 1 Sections 1, 5, 7 and 16 of the Ohio Constitution.

The plaintiffs in the Shariff case had adequate access to the court, in the form of a bench trial, and did not ask the court for the resolution of parish property ownership under "Neutral Principles of Law" as defined by the US Supreme Court in Md. & Va. Churches v. Sharpsburg Ch., 396 US 367, 370 (1970) because there was no need to. The mosque in the Shariff case was recognized by the court to be of congregational polity.

Proposition of Law No. IV: Civil courts have subject matter jurisdiction under Article I Section 7 of the Ohio Constitution and the 1st, 5th and 14th Amendments of the US Constitution to decide the clandestine abandonment of a domestic church of congregational polity for a foreign church of hierarchical polity and the fraudulent misrepresentations associated with the act of abandonment.

> It may be concluded withdrawal from a church and uniting with another church or denomination is a relinquishment of all rights in the church abandoned. Although the civil courts will not, in the case of persons excommunicated by competent church authority and inquire that the person have been regularly or irregularly excommunicated, such courts may inquire whether the expulsion was the act of the church of or persons who were not the church, and who, consequently had no right to excommunicate anyone." Bouldin v. Alexander, 82 US 131 (1872)

Proposition of Law V: The trial court and the appeals court ignored plaintiffs Amended Complaint that the "merger" of St. Vladimir's with the Church of Constantinople was illegal and not in compliance with any statute found in ORC Chapter 1715 (Religious and Benevolent Organizations). The effect of the trial court's action and the appeals court's affirmation is to arbitrarily create a strange, new church of unknown polity in violation of the 1st, 5th and 14th Amendments of the US Constitution and Article I Section 7 and Article II Section 26 [the uniformity clause] of the Ohio Constitution. Thus, plaintiffs are being coerced by judicial fiat to recognize and support that new church with a "take it or leave it" indifference without a ruling on defendants' abandonment and fraudulent misrepresentations and concealment of St. Vladimir's "merged identity".

Corporations, such as St. Vladimir's, are persons within the Constitutional 14th Amendment provision forbidding the deprivation of property without due process of law as well as a denial of the equal protection of the laws. Covington & L. Turnp. Road Co. v. Sandford, 164 US 578.

The Framers [of the US Constitution] did not set up a system of government in which important discretionary governmental powers would be delegated to or shared with religious institutions. Their mere appearance of a joint exercise

of legislative authority by church and state provides a significant symbolic benefit to religion in the minds of some by reason of the power conferred. Larkin v. Grendel's Den, Inc., 459 US 116, 125 – 126 (1982).

The First Amendment is violated by the imposition of an alien polity, whether it be theological, or simply a foreign type of corporate structure imposed upon a church. Kersh v. Gen. Council of Assemblies of God, 804 F.2d546 (9th Circ. 1986).

The plaintiffs have the right not to be subject to the arbitrary or capricious state action: "The Due Process Clause of the 14th Amendment was intended to prevent government from abusing its power, or employing it as an instrument of oppression." DeShaney v. Winnebago County Dept. Of Social Services, 489 US 189, 196 (1989). The "establishment of religion" clause of the First Amendment means at least this: "Neither a state nor the Federal Governmert can set up a church." Reynolds v. United States, 98 US 145, 164. The symbolic union of government and religion in one sectarian

enterprise is an impermissible effect under the Establishment Clause. Grand Rapids School Dist. v. Ball, 473 US 373, 392 (1985). The Free Exercise Clause does not entitle a religious organization to special benefits. Swanson v. Guthrie Indep. Sch. Dist., 135 F.3d 694, 701 (10th Circ. 1998).

In Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 US 673 (1930), the US Supreme Court stated:

> A violation of the due process clause may be accomplished by the state judiciary in the course of construing an otherwise valid statute.
> The Federal guaranty of due process extends to state action through its judicial, as well as through its legislative, executive or administrative branch of government. Id. Whether acting through its judiciary or legislature, a state may not deprive a person of all existing remedies for the enforcement of a right which the state has no power to destroy, unless there is, or was afforded some real opportunity to protect it. Id.

The Establishment Clause forbids a State to hide behind the application of formally neutral criteria and remain studiously oblivious to the effect of its actions. Capitol Square Review & Advisory Bd. v. Pinette, 515 US at 577; see also Church of Lukumi Babalu, supra. at 534 – 535 making the same point in the Free Exercise context.

In United States v. Salerno, 481 US 739, 746 (1987) [analyzing the Due Process Clause of the Fifth Amendment], the US Supreme Court stated:

> The Due Process Clause of the Fourteenth Amendment prohibits the state from depriving any person of life, liberty or property without due process of law. This Clause clothes individual with the right to both substantive and procedural due process. Substantial due process prevents the government from engaging in conduct that shocks the conscience or interferes with rights implicit in the concept of ordered liberty. Id. Procedural due process requires that governments from engaging in conduct that shocks the conscience or interferes with rights implicit in the concept of ordered liberty. Id.

Plaintiffs' "merger" rights were also violated under Section 26, Article II of the Ohio Constitution that states "all laws of a general nature shall have a uniform operation throughout the state." Desenco, Inc. v. Akron, (1999), 84 Ohio St. 3d 535. [In yet another act of religious discrimination based on disparate treatment, plaintiffs were denied a legal review by the trial court and the appeals court of the alleged non-statutory "merger" of St. Vladimir's with the Church of Constantinople which another Ohio court did not

deny to another church. Amanda Baptist Church v. Cornerstone Baptist Church, Inc., 1911 WL 259566, Ohio App. 3d Dist., unpublished, ruling that a consolidation was declared void, having not been ratified pursuant to ORC 1715.08]

Proposition of Law No. VI: The trial court and the appeals court improperly dismissed plaintiffs' Amended Complaint in violation of Civ. R. 8 and the direction and intent of Conley v. Gibson, 355 US 41 (1957).

The trial court egregiously distorted and misrepresented plaintiffs' Amended Complaint by erroneously ruling that Plaintiffs were "former parishioners" of St. Vladimir's because they still are members of the church. The appeals court also egregiously distorted and misrepresented plaintiffs' Amended Complaint by ruling that St. Vladimir's approved the merger with the Church of Constantinople, when in fact no merger ever legally took place and was never lawfully or formally approved of by St. Vladimir's.

These erroneous conclusions, unsupported with any evidence, deprived plaintiffs of property rights in a congregational church without due process and equal protection

[see Randolf v. First Baptist Church, 120 N.E. 2d 485 (1954) whereby membership in a congregational church is a property right] in violation of the 5th and 14th Amendments and violation of the Establishment and Free Exercise Clauses of the 1st Amendment under the legal theory of a "hybrid" Constitutional claim. Department of Human Resources of Oregon v. Smith, 494 US 872, (1990).

The skeletal pleadings, which constitute the meager record before the Supreme Court of Ohio, fail to determine, as a matter of law, whether plaintiffs' Amended Complaint was so deficient that plaintiffs were denied the opportunity to present their evidence under the liberal requirements of notice pleading under Civ. R 8 and direction of Bell v. Hood, 327 US 678 (1946).

When a [court] reviews the sufficiency of a complaint, before the reception of any evidence…its task is necessarily a limited one. The issue is not whether the plaintiff will ultimately prevail but whether the plaintiff is entitled to offer evidence to support the claim. Indeed it may appear on the face of the pleadings that a recovery is very remote and unlikely but that is not the test. Scheurer v. Rhodes, 416 232, 236 (1974).

The court is required to construe complaint in light most favorable to plaintiff and take allegations contained therein as true. Id. This is precisely what the trial court failed to do and the appeals court failed to correct on appeal. Thus, plaintiffs were denied the opportunity to present evidence of their claims by the trial court and the appeals court.

Before the state may deprive a person of a property interest, it must provide procedural due process consisting of notice and a meaningful opportunity to be heard. Cleveland Bd. of Edn. v. Loudermill, 470 US 532 (1985). In some situations, due process requires that the party about to suffer the deprivation first have the opportunity to confront and cross-examine adverse witnesses. Greene v. McElroy, 360 US 474 (1959). Confrontation and cross-examination are important where the government action turns on questions of fact. Goldberg v. Kelly, 397 US 254, 269 (1970). Action of state courts and their officers is "action of the state" within 14th Amendment. Jones v. Evans, (N.D. Ohio 1996) 932 F. Supp. 204. Plaintiffs were deprived by the trial court and the appeals court "the opportunity to confront and cross-examine adverse

witnesses" and the meaningful opportunity to be heard under the 1st, 5th and 14th Amendments in order to protect their property interests in a congregational church.

A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conley v. Gibson, 355 US 41 (1957). It is not beyond doubt that plaintiffs could not prove a set of facts consistent with the allegations stated in their Amended Complaint.

Proposition of Law No. VII: Unresolved conflict exists in Ohio Appellate Courts pertaining to the statutory definition of "enterprise" in RC 2923.31 (c) of Ohio's Pattern of Corrupt Activities statute. The issue before the Ohio Supreme Court is whether the definition of the word "enterprise" as used in the Ohio PCA is independent of the definition of the word "enterprise" as used in the Federal Rico Statute? The reason we raise this issue is because of the cases cited by the defendants and the trial court, namely Universal Coach Inc. v. New York City Trans. Auth., (1993), Ohio App. 3d 284, 291 and Patton v. Wilson, Cuyahoga App. No. 82079, 2003-OHIO-3879 which conflicts with the decisions of other Ohio Appellate Districts which we also raised in the Court of Appeals below. The Eighth District Court's failure to either certify this conflict to you, the Ohio Supreme Court, to decide or to at least make an initial determination on its own resulted in a denial of plaintiffs' 1st, 5th and 14th

Amendment Protections of the US Constitution and Article 1 Section 7 of the Ohio Constitution.

Plaintiffs stated a statutorily correct definition of an Ohio PCA "Enterprise" in their Amended Complaint at Paragraph 9: "The "enterprise" as defined in ORC 2923.31 (c) is St. Vladimir's. The enterprise is a LEGAL ENTITY that has an on-going business separate and apart from the pattern of corrupt activity and conspiracy alleged herein. Each of the defendants was employed by or associated with St. Vladimir's". Plaintiffs definition of an Ohio PCA "enterprise" is in total harmony with the Ohio Supreme Court definition of an Ohio PCA "enterprise" definition. See State v. Schlosser, 681 N.E. 2d 911, 914 (Ohio 1997).

Patton v. Wilson, Cuyahoga App. No. 82079, 2003-Ohio-3879 conflicts with an earlier ruling, State v. Wilson, 682 N.E. 2d 5 (Ohio App. 9 Dist. 1996) which held that:

> Ohio courts, unlike their federal counterparts, have not defined enterprise in such a way that a defendant may be convicted of those offenses only if he or she was associated with an "enterprise" that had an existence separate and apart from the corrupt activity. State v. Habash, (Jan. 31, 1996), Summit App. No. 17073, unreported 1996 WL 37752. Rather, a defendant may be convicted of those offenses if he was employed by or associated

> with any entity that meets the statutory definition of an "enterprise." See Id."

Patton v. Wilson, supra. cites the ambiguities of Federal RICO case law that are not found in the well-defined Ohio PCA statute RC 2923.31 (c) which defines the word "enterprise" differently. In State of Ohio v. Zorn, (Ohio App. 2 Dist. 1999) WL 64254, unpublished, the court stated:

> The Tenth District Court of Appeals of Ohio has followed [Federal case law] in requiring the three federal elements of an enterprise to be proved for conviction. State v. Warren, (Dec. 31, 1992), Franklin App. No. 92AP-604, unreported. The Court of Appeals in the Eighth District has also relied on federal interpretations of the RICO statute in holding the federal requirement that the structure of an enterprise be separate and apart from the predicate acts must be satisfied for the existence of an enterprise to be proven under the Ohio Corrupt Activity Statute. US Demolition & Contracting, Inc. V. O'Rourke Const. Co., (1994), 94 Ohio App.3d 75, 84 – 85, 640 N.E. 2d 235; Universal Coach, Inc. v. New York Transit Auth., Inc., (1993), 90 Ohio App.3d 737, 742, 682 N.E. 2d 5.
>
> Although the State concedes that a conviction under the Ohio Corrupt Activity Statute requires proof on all three of the federal elements constituting an enterprise, Ohio courts have not wholeheartedly embraced that position. Our sister court in the Ninth District, for instance, has rejected the notion that an enterprise must possess the attributes described in the three

> federal elements. State v. Wilson, (1996, 113 Ohio App. 3d 737, 742, 685 N.E. 2d 5. The court has reasoned that the legislature's broad definition of "enterprise" in RC 2923.31 (c) "encompasses informal, unstructured associations and even a single individual," and is incompatible with a requirement that formal structure, continuous existence, or existence separate from the criminal activity in which it engages be shown. State v. Habash, (Jan. 31, 1996), Summit App. No. 17073, unreported. This court, along with the Fifth District Court of Appeals, has resolved cases questioning the existence of an enterprise under the corrupt activity statute of an enterprise under the corrupt activity statute without reference to the federal requirements. State v. McDade, (Nov. 20, 1991) Miami App. No. 90 CA 46 unreported; State v. Kinsey, (Nov. 30, 1995) Holmes App. No. CA-515, unreported. Instead, we applied the facts before us to the statutory definition of "enterprise" found in RC 2923.31 (c) without resort to the federal elements and found that the existence of an enterprise was proved.

When interpreting Ohio PCA statutes, the Ohio Supreme Court stated in State v. Morgan, 642 N.E. 2d 1090 (Ohio 1994). "Given the well-defined intent of the General Assembly in this area, there is no room for judicial interpretation." A court should give effect to the words actually employed in a statute, and should not delete words used, or insert words not used, in the guise of interpreting the statute. State v. Waddell, (1995), 71 Ohio St. 3d 630, 631, 646 N.E. 2d 821, 822.

CONCLUSION

The erroneous decisions of the lower courts undermines the structure and the purpose of constitutional protections found in the 1st, 5th and 14th Amendments of the US Constitution and the parallel guarantees of Article I Sections 1, 5, 7, and 16 of the Ohio Constitution.

For reasons discussed above, this case involves important matters of public policy and general interest and substantial constitutional questions. The Appellants request that this court grant jurisdiction and allow this case so that the important issues be reviewed on the merits and in the interest of justice. Certification of the record of the case to the Supreme Court, because of a conflict between judgments of the courts of appeals upon any question, brings the entire case, not merely the certified question, before the Ohio Supreme Court for review. Couk v. Ocean Accident & Guar. Corp., (1941), 138 Ohio St. 110, 33 N.E. 2d 9: Pettibone v. McKinnon, (1932), 125 Ohio St. 605, 183 N.E. 786.

Respectfully Submitted,

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[S] _____
Maria Turchyn, pro se

SERVICE

A copy of the foregoing Notice of Appeal of Appellant William S. Turchyn has been filed with the Ohio Supreme Court and a copy of same sent by regular US Mail this 27th day of July, 2004 to the following:

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